



Anti-money laundering and counter-terrorist financing measures - Spain

5. Preventive measures

Effectiveness and technical compliance



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5. PREVENTIVE MEASURES

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Key Findings

The risk-based approach to AML/CFT was introduced in Spain in 2010 and the initial supervisory findings since its introduction appear to be generally positive. Most obliged entities have a historically-based culture of compliance, and tend to approach the risk-based AML/CFT obligations in a rules-based manner, though there is visible progress in adapting to the risk-based approach (albeit mostly in larger banks).

The banking sector is the key gatekeeper to the financial system in Spain. Banks are well aware of their AML/CFT obligations and have a low risk appetite when implementing AML/CFT measures. Consolidation in the banking sector has also resulted in better systems and a more professional attitude towards AML/CFT compliance. While there is generally a high level of compliance and awareness among the financial institutions and most DNBFPs, there are several weaknesses noted by the supervisors – though these do not seem to be systemic.

Supervisory work by SEPBLAC triggered the detection of major criminal abuse of the MVTs sector by complicit agents in recent years. This has led to a number of criminal convictions of agents, the exit of some providers from the sector, and a comprehensive response from supervisors, operational authorities, and the industry. The sector has been very active over the past years in raising awareness and ensuring compliance, for instance by setting up a register of high risk agents. Supervisors have also intensified their supervision of (licensed) MVTs and indirectly their agents. This has caused a cleansing effect in the sector with less money transfers to certain countries. Sustained efforts are necessary given the very high risks in this sector. However, ongoing monitoring for unregistered MVTs operators is at a very low level.

Notaries have a critical gatekeeper role in Spain. The profession has actively worked with the authorities to develop systems to effectively analyse potentially suspicious activity and to provide relevant information to the authorities. They also play a key role in ensuring the transparency of legal persons and arrangements, as noted below. Nevertheless, there have been cases where notaries were used by criminal organisations.

Lawyers have a low level of awareness of ML/TF risks. Lawyers do not recognise the ML/TF risks in their profession and feel the AML/CFT obligations pose an unnecessary burden, despite the role of lawyers in high-profile ML networks. Supervisors should intensify inspections of this sector, and in particular raise awareness of risks among members of the profession.

5.1 Background and Context

(a) Financial Sector and DNFBPs

5.1. **Spain has a significant financial sector, which is dominated by banks.** Total banking sector assets (excluding foreign branches) amount to about 320% of GDP (over EUR 3 trillion). Spanish financial institutions are well-connected with the international financial system, and operate within the context of EU single market rules and the passporting scheme. Conglomerate banks operate branches and subsidiaries outside the EU, most notably in Latin America and Asia. As a result of the 2008 international financial crisis, Spanish credit institutions and savings banks were consolidated and reduced in number through mergers and take-overs, with bank management functions becoming more concentrated in major cities. Currently the five largest banks account for more than 70% of total banking sector assets.

5.2. Spain has the sixth largest insurance sector in Europe with gross premium income of approximately EUR 58.5 billion in 2010 of which EUR 27.4 billion (46.27%) corresponds to life insurance. Nevertheless, **both the insurance and the securities sectors are significantly smaller than Spain's banking sector in terms of the assets under management** - less than EUR 250 billion and about EUR 45.7 billion respectively.¹ The insurance market is dominated by a few large players (including some from other EU member states) with the top 5 life insurers holding 37.5% of the market assets. In 2011, there were 113 life insurers operating in Spain (including from most of the major international groups), 171 non-life insurers, 2 reinsurance companies, 77 foreign branches, 89 811 licensed insurance agents, and 4 660 licensed insurance brokers.²

5.3. **As for the securities sector**, in December 2011, there were 94 investment firms (49 broker dealers and 45 brokers), and 187 banks and other credit institutions authorised to carry out investment services in Spain. The securities sector is dominated by bank-owned broker dealers that account for about 72% of all commissions earned from investment services.³

5.4. **Spain's retail financial sector is dominated by integrated financial groups, with securities and insurance products sold through the associated bank branch networks.** In the securities sector banks account for about 72% of all commissions earned from investment services. Because of the degree to which Spain's financial sector is integrated within banking groups, the banks perform an important risk management function with respect to other types of financial service.

5.5. **The total volume of money value transfers is conducted by 25 payment institutions that are licensed by the Bank of Spain to provide such services.** (There are more payment institutions that are licensed in Spain to provide other types of payment services). As an EU Member State, Spain permits financial institutions from the EU to provide services in Spain (under EU single market rules and the passporting scheme), which potentially raises some risks relating to supervision and information exchange regarding non-resident financial institutions. Passported entities are nevertheless subject to Spain's *AML/CFT Law* with regards to their activities conducted in Spain: *art.2.2*. The MVTS sector principally processes remittances from Spain to the home countries of foreign workers, such as Romania and Colombia. The sector has changed significantly following a 2009 case in which Spanish authorities identified large-scale money laundering using MVTS (described in Box 3.2).

5.6. **There is a range of designated non-financial businesses and professions (DNFBP) doing business in Spain.** There are about 3 000 **notaries** active in Spain, all of which have the status of public functionaries. Notaries play a particularly important role in the Spanish context because their involvement is mandatory in most types of transactions involving company formation and the transfer of real estate, which are high risk areas. Spain also has a large number of **lawyers**: as of 2006, there were over 150 000 lawyers

1 IMF (2012a), pages 7, 10 and 43.

2 IMF (2012b), p.8 and 10.

3 IMF (2012c), p.8.

registered in Spain (almost 115 000 of which were in active practice). Spain has 1 115 **accountants and tax advisors** operating in the country, as well as 1 400 natural persons and 1 203 firms providing **auditing services**. There is also a small sector of **trust and company service providers (TCSPs)** operating in Spain (who are not otherwise notaries, lawyers or accountants) comprised of 19 entities. Although it is not known exactly what percentage of TCSP activities these 19 entities account for, their relative importance is not considered to be significant because Spanish law requires a notary to be involved in company formation and share transfers, and does not recognise trusts. Although trustees are subject to AML/CFT obligations, no information was available on how frequently trusts are used, although the authorities are aware that trusts hold real estate and process transactions. Based on high profile ML cases, lawyers and notaries are exposed to ML risks and in some cases lawyers and notaries have been complicit, or were used, in ML operations.

5.7. **Real estate agents and developers** are a significant DNFBP sector in Spain and at high risk of ML. Real estate transactions are a major mechanism for ML in Spain, particularly for large-scale ML. Property in Spain is an attractive investment for criminals (from Spain and other countries) to make using their proceeds. Several major cases of corruption in local government have been related to permissions for real-estate development. It is notable that in addition to real estate agents, developers, and land registrars are also obliged entities under Spain's *AML/CFT Law*. Spain has 4 227 real estate agents.

5.8. The **casino and gambling sector** is quite small with 51 authorised gaming operators (offering games of poker, betting, casinos and bingos) and two authorised lottery operators. Spain has 39 casinos which attracted EUR 3.3 million visitors in 2006. In 2013, the on-line gaming market amounted to EUR 5.48 million in bets with EUR 5.25 million in prizes. There are 2 507 **dealers in precious metals and stones** doing business in Spain, of which 53 comprise over 50% of the sector activity.

(b) Preventive Measures

5.9. **Spain has revised almost all elements of the preventive regime for AML/CFT since the last evaluation in 2006. The key element of the regime is the *AML/CFT Law* which establishes the scope of AML/CFT obligations, the core requirements for CDD, other preventive measures, suspicious transaction reporting, and supervision of these obligations. The law was amended in December 2013 to incorporate additional requirements (reflecting changes made to the FATF Standards in 2012). The law is supplemented by a regulation (*RD 304/2014*) which was adopted and entered into force on 6 May 2014 (i.e., during the on-site visit). This regulation sets out further detail on several requirements, and addresses some remaining elements of the FATF Standards which had not yet been incorporated in Spanish law.**

5.10. **Spain's laws and regulations were originally based on the *EU 3rd Money Laundering Directive*, and the updates since 2010 have been very closely based on the *FATF Recommendations and interpretive notes*. As a result, there is a high degree of consistency between Spain's preventive regime and the FATF Standards. Overall Spain has a good level of compliance with CDD and record-keeping requirements, additional measures for PEPs, correspondent banking, MVTS, etc. Spain applies the same preventive measures to DNFbps as to financial institutions (with some limited exceptions and adaptations), so the level of technical compliance is also generally high for the DNFBP sectors.**

5.11. **There is one area where the laws and regulations applicable in Spain have not been updated: wire transfers remain governed by the *2006 EU Wire Transfer Regulation*, which has not yet been updated to reflect the changes to the *FATF Recommendations in 2012*. This means that Spain has significant deficiencies relating to information on the beneficiaries of wire transfers, and obligations on intermediary financial institutions.**

(c) Risk-Based Exemptions or extensions of preventive measures

5.12. **Spain gives specific exemptions from AML/CFT obligations for foreign exchange by hotels (subject to additional restrictions and thresholds), and opens the possibility of giving future exemptions for notaries when performing acts with no economic or patrimonial content: *RD 304/2014 art.3.2*. Additionally, smaller institutions are exempt from the more detailed aspects of the internal control requirements: *RD 304/2014 art.31*.**

5.2 Technical compliance (R.9-23)

Recommendation 9 – Financial institution secrecy laws

5.13. **Spain is compliant with R.9.** Financial institution secrecy laws do not appear to inhibit the implementation of AML/CFT measures, and there are extensive provisions in law to ensure that adequate information can be shared.

Recommendation 10 – Customer due diligence

5.14. **Spain is largely compliant with R.10.** All of the required sectors and activities are included and, following the adoption of Royal Decree 304/2014, most elements of R.10 are in place. As noted above Spain has extended the CDD obligations beyond those entities and persons set by the *FATF Recommendations*. There is a minor deficiency remaining, which relates to the requirement to consider an STR in all cases where CDD cannot be completed.

Recommendation 11 – Record-keeping

5.15. **Spain is compliant with R.11.** Spain requires documentation gathered for compliance with AML/CFT obligations is retained for a minimum of ten years, including copies of documents obtained through the CDD process, and records of transactions and their participants.

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

5.16. **Spain is compliant with R.12.** Spain passed amendments to the *AML/CFT Law* in December 2013 reflecting the revised FATF requirements on PEPs. Spain's law closely follows the *FATF Recommendations*, using the language of the *FATF Methodology*. Spain's definition of domestic PEPs includes mayors of towns with a population of more than 50,000. All criteria are met in a way that is consistent with the Recommendation and (where relevant) with the FATF's guidance on this issue.

Recommendation 13 – Correspondent banking

5.17. **Spain is compliant with R.13.** Spain's law closely follows the requirements of R.13. The only significant difference is that Spain does not apply additional safeguards to payable-through accounts, but instead prohibits such accounts altogether.

Recommendation 14 – Money or value transfer services

5.18. **Spain is compliant with R.14.** MVTS providers and their agents are required to be registered, and are listed in a publicly available register, with measures in place for internal controls, and monitoring.

Recommendation 15 – New technologies

5.19. **Spain is compliant with R.15.** Financial institutions are required to pay special attention to ML/TF threats arising from products or transactions that favour anonymity, and to assess or mitigate the risks associated with new products before they are launched. Competent authorities have conducted a preliminary risk assessment of new payment methods, and have systems in place to identify and respond to emerging vulnerabilities.

Recommendation 16 – Wire transfers

5.20. **Spain is partially compliant with R.16.** Spain implements the requirements on wire transfers primarily through the *EU Regulation on Wire Transfers (1781/2006/EC)*. This Regulation does not include all the requirements of R.16. Most significantly, there are no obligations to obtain, verify, attach, retain, and

record information on the beneficiary of a wire transfer. There are also only very limited requirements for intermediary financial institutions in executing a wire transfer. Both these requirements were added to the Recommendation in 2012, and have not yet been transposed into the applicable EU regulation.

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

5.21. **Spain is largely compliant with R.17.** Spain broadly meets the criteria, following the introduction of several specific provisions in May 2014: *RD 304/2014*. One specific element remains missing: the level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

5.22. **Spain is compliant with R.18.** There are comprehensive requirements for internal control procedures and centralised internal control units.

Recommendation 19 – Higher-risk countries

5.23. **Spain is compliant with R.19.** Financial institutions are required to take enhanced measures in relation to six defined types of high risk countries. Competent authorities have powers to apply a range of countermeasures and have mechanisms to advise financial institutions on country risks.

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transactions

5.24. **Spain is compliant with R.20.** Spain has enacted new suspicious transaction reporting requirements: *AML/CFT Law art.2.5 & 17-18*. Financial institutions are required to notify SEPBLAC of any (attempted) act or transaction showing any indication or certainty that it bears a relation to a full range of ML/TF offences, covering all 21 designated categories of predicate offences, including tax crimes: *AML/CFT Law art.2.5 & 17-18, RD 304/2014 art.23-25*. A positive feature is that the reporting obligation has also been extended to SAREB, and also to the national administrator of the emission allowance registry which was established in 2005 to regulate the system for trading greenhouse gas emission allowances, given the risks of ML and VAT fraud through this sector.⁴

Recommendation 21 – Tipping-off and confidentiality

5.25. **Spain is compliant with R.21.** Financial institutions, and their directors and employees are protected from liability when disclosing information to the competent authorities in good faith under the *AML/CFT Law: art.23*. A positive feature is that Spain has also enacted exceptions to the disclosure prohibition in order to facilitate intra-group exchange of information and contribute to the effective prevention and detection of suspicious transactions: *AML/CFT Law art.24*.

5.26. Financial institutions, and their directors and employees are prohibited from disclosing to the customer or third persons the fact that information has been transmitted to the FIU or is (or may be) under review for AML/CFT purposes. A positive feature is that Spain has implemented specific measures to protect obliged persons, their directors, employees or agents. For example, under no circumstance can the FIU or any other competent authority or civil servant having access to such information reveal the identity of a reporting

⁴ The risks of money laundering through carbon trading is discussed in the *Guide to Carbon Trading Crime* (INTERPOL, 2013).

director, employee, or agent. Likewise, the results of the FIU's analyses disseminated to law enforcement authorities cannot be directly incorporated into the judicial proceedings because it could infer who the reporting party is: *AML/CFT Law art.46*. Another positive feature is that the law clarifies how the prohibition on conducting any suspicious transaction applies in the context of notaries and registrars who, as public officers, are generally not entitled to refuse or turn away a customer and have a different notion of customer: *AML/CFT Law art.19*.

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

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5.27. **Spain is largely compliant with R.22.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs. The scope of the AML/CFT obligations includes all of the types of DNFBPs and activities set out in Recommendation 22. Spain also extends these obligations to art dealers and property developers. While there are no deficiencies relating specifically to the CDD regime for DNFBPs, there are technical deficiencies with Spain's implementation of Recommendations 10 and 17 noted above, and these problems impact the DNFBP sector as well as financial institutions.

Recommendation 23 – DNFBPs: Other measures

5.28. **Spain is compliant with R.23.** Spain applies largely the same AML/CFT requirements to both financial institutions and DNFBPs. The scope of the AML/CFT obligations includes all of the types of DNFBPs and activities set out in Recommendation 23. There are some specific measures relating to DNFBPs - notably the use of Centralised Prevention Bodies to consider and submit STRs on behalf of collegiate professions (Notaries and Registrars). There are no deficiencies relating specifically to the measures for DNFBPs, and no significant technical deficiencies in Spain's implementation of Recommendations 18, 19, 20 and 21.

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

(a) Understanding of ML/TF risks & AML/CFT obligations, and application of mitigating measures

5.29. **The risk-based approach was introduced in Spain in 2010 and the supervisory findings since its introduction appear to be generally positive.** Following some high profile ML/TF cases, the Spanish authorities have put in a lot of effort in identifying generic ML/TF risks and have informed the financial institutions and DNFBPs of those risks. In general, financial institutions and DNFBPs accept the understanding of the risk as set out by the authorities and in the law. However, there are differing levels of implementation amongst sectors. Financial institutions and DNFBPs are obliged to make a risk assessment of the specific risks they face and the adequacy of their risk mitigation measures: *AML/CFT Law art.5, 6 and 7*. More detailed requirements for this were set out in Royal Decree 304/2014, which entered into force during the on-site. Therefore, at the time of the assessment, not all FIs and DNFBPs had completed such assessments, and it was not possible for the assessment team to fully evaluate how the private sector is implementing the newest legal obligations. Overall, the understanding of ML/TF risks and obligations seems strongest among the key sectors (banks and notaries), with other financial institutions and DNFBP sectors having a less well-developed understanding.

5.30. **Most obliged entities have a culture of compliance, and a low appetite for ML/TF risks. For this reason, they still approach their AML/CFT obligations in a rule-based manner.** The risk-based approach represents a substantial change from the previous rules-based *AML/CFT Law*. However, obliged entities appear to apply standard measures consistently to all customers and business lines, including those which are low-risk. In some instances they have shown a preference for avoiding business with certain high-risk customers (for example, some MVTs providers), rather than applying graduated measures or enhanced CDD. There has been visible progress in adapting to the changes, mostly by the larger banks. Though there

is generally a high level of awareness among the financial institutions and most DNBFPs, there are several weaknesses noted by the supervisors, though these do not seem to be systemic.

5.31. **Banks are aware of the ML/TF risks and their AML/CFT obligations and have a low risk appetite when implementing AML/CFT measures.** All banks have a good idea of the ML/TF risks concerning their customers, products and geographies, and according to the Bank of Spain, the quality of risk assessments by banks is improving. Large banks have elaborate systems for profiling and managing ML/TF risks for their worldwide operations and implement group-wide measures tailored to those specific risks. These larger banks also have more sophisticated understanding of the risks, and the capacity to develop their own risk models and indicators, in addition to using those included in the risk catalogues produced by the Commission. Other financial institutions' risk assessments mainly use the same high risk identifiers which have been identified in the risk catalogues produced by the Commission (i.e., there is less independent risk-analysis undertaken in these sectors). Risk classification of customers at larger banks is based on automated scoring systems.

5.32. The consolidation in the banking sector has resulted in better systems and a more professional attitude towards AML/CFT compliance. Nevertheless, there remains room for improvement: only some of the larger banks take into account the ML/TF risks from new or emerging technologies (e.g., arising from new types of payment service providers). Smaller banks have not assessed the risks of new products such as pre-paid cards, even when they offer those products themselves. Finally, as noted elsewhere more focused guidance and typologies are needed for the obliged sectors on laundering in the real estate sector by foreign criminals.

5.33. **Major criminal abuse of the money and value transfer service (MVTs) sector in recent years has led to significant improvements in preventive measures.** Box 3.2 describes a major case involving money laundering by complicit agents of MVTs providers. This case has led to a number of criminal convictions of agents, and the exit of several providers from the sector. It has also triggered a comprehensive response from supervisory and operational authorities, and the industry itself.

5.34. MVTs providers are aware of the specific risks they face, and the controls they need to address these risks, particularly those arising from their use of agent networks and from the fact that their business is cash-based. They are also highly aware of the attention being paid to them by the authorities, who have made an extensive risk analysis of the MVTs sector, and put them under significant supervisory pressure. Nevertheless, despite good awareness of specific risks within the sector, the MVTs sector believes its general risk level to be low relative to other sectors given the supervisory and voluntary measures implemented; their transactions are generally processed through banks; and that remittance volumes are small compared to the estimated volumes of criminal proceeds laundered in Spain. MVTs providers and the authorities have been working together to address and mitigate the specific risks. Measures implemented include:

- a. an industry-held register of high risk agents (or the so-called "bad agents"), through which MVTs providers can share alerts with each other about potential bad actors
- b. applying stronger CDD measures than the minima required by law, regardless of the size of transaction, source of funds or the financial situation of clients
- c. applying lower limits on cash transactions
- d. requiring systematic reporting to the FIU of all MVTs transactions on a monthly basis, which are screened by the FIU to identify suspicious transactions or patterns of activity, and
- e. strengthened internal controls within the sector, in particular for taking-on and training agents, and transaction monitoring systems.

5.35. These measures, and intensified supervision by SEPBLAC, appear to have had a cleansing effect in the sector. There has been a drop in the volume of funds transferred to certain high-risk countries. As well, the sector is now very aware of the risks posed by bad agents, and has taken the mitigating measure of establishing a register of "bad agents". However, the assessment team was told by representatives of the

sector that overall given the relatively low volumes of transactions processed by them compared to the total estimated criminal proceeds laundered in Spain, MVTS operators (other than agents) as a sector should be considered to be low risk, particularly since their business ultimately goes through banks. Sustained efforts are therefore necessary to ensure that the MVTS sector understands the risks that can be posed by certain of their own customers. Representatives from the MVTS sector also highlighted their concerns that the perceived high risk of MVTS by banks is leading them to be more cautious in providing their services. In a few isolated cases, this has led the banks to refuse services to the sector as a whole, rather than taking into account, on a case-by-case basis, the level of risk of individual MVTS customers or risk mitigation measures. This is not a correct implementation of the RBA, and is not in line with the FATF standard. MVTS providers are reliant on access to the banking system in order to continue operating. They are concerned that this behaviour by banks is closing the sector to new entrants and, in the long term, this could choke the MVTS sector altogether and drive remittance flows underground to unregistered and informal channels.

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5.36. As for banks, because MVTS have been identified by SEPBLAC as a high risk sector, some banks told the assessors that they would not accept an MVTS as a new customer, suggesting there is some justification for concern on the part of the MVTS sector. Those banks still providing services to MVTS customers consistently treat them as high risk. The Spanish authorities indicate that it is not the intention of government policy to exclude MVTS operators from the banking market. The authorities believe that high risk MVTS customers need to be monitored appropriately, and not automatically excluded from access to the banking sector. The assessment team were presented with details of a case where a MVTS operator successfully sued a bank to restore banking services.

5.37. **There is limited awareness in the securities sector of ML/TF risks related to all types of securities transactions.** Firms therefore do not pay adequate attention to the higher-risk business lines in the sector, including equity management and collective investment schemes, which are considered high-risk by at least one of the supervisors (SEPBLAC). In general, the securities sector follows those higher risk categories identified in the law or in the risk catalogues. All types of institutions involved in securities comply with their AML/CFT obligations in a formal, rules-based way. A risk-based approach to AML/CFT compliance has not yet been implemented in the sector. The securities sector sees itself as low risk, on the basis that most business is done in the context of a financial group and does not therefore involve direct contact with clients or handling cash.

5.38. **The insurance companies have not conducted a risk assessment of their inherent risks and instead use the risk indicators in the law, or the risk catalogues issued by the Commission, to assess customer risks.** Insurance companies have systems in place to determine customer risk and to monitor for unusual transactions or changes in the customer profile. However, the thresholds (of premium or insured amount) which can be reached before enhanced due diligence is applied are very high. Insurance firms also consider themselves to be medium or low risk, for the same general reason: reliance on the banking sector.

5.39. **Consumer Credit providers** provide consumer loans linked to goods purchases, averaging EUR 12 000 for cars and EUR 2 000 for other items. The sector considers itself low-risk for structural reasons, but applies mitigating measures to the repayment of loans, which are permitted only through a direct debit from a bank account in Spain (with monitoring of any changes in the bank account used).

5.40. **Lawyers have a low level of awareness of ML/TF risks, do not recognise the level of risk in their profession, and feel that their AML/CFT obligations pose an unnecessary burden.** Legal professional bodies consider the ML risks faced by non-complicit lawyers to be low, as they are not normally involved in higher-risk types of business (e.g., real estate transactions, which are done by notaries instead), but they work closely with their clients, and therefore are in a position to identify suspicious activity. Lawyers have played a central role in establishing and operating the organised ML networks which have been at the centre of a number of high-profile ML prosecutions (e.g., *Malaya* and *White Whale* cases). However, the involvement of lawyers in these cases is not seen as representative of the risks: the lawyers involved are considered as complicit criminals (*Malaya*) or as acting recklessly (*White Whale*).

5.41. Spain had approximately 150 000 lawyers in 2006 of which about 115 000 were in active practice. There seem to be several structural and practical reasons for the low level of awareness of ML/TF risks and obligations in the legal profession. Legal professional organisations are very fragmented (Spain has

83 separate Bar Associations throughout the country) which complicates the potential availability of advice and training. The number of lawyers per capita in Spain is one of the highest in the EU,⁵ and AML/CFT supervision of the legal profession commenced very recently and remains minimal. In addition, it is not clear how many lawyers provide services that fall under the scope of the *AML/CFT Law*. The sector itself estimates this is as low as 400; however, no further details are available to substantiate this estimate.

5.42. **Notaries are very aware of their significant gatekeeper role, as well as of the importance of the information they hold, and have actively worked with the authorities to develop systems to open up their wealth of information for the authorities.** Generally, the profession seems to have a good awareness of the ML/TF risks faced by notaries in the course of their normal business. The Notarial profession has a centralised prevention body (the OCP), which has developed a comprehensive list of risk indicators which is used by all notaries. The OCP also has the function of examining potentially suspicious activity, or patterns of activity, conducted through notaries. Because of their role in particular in relation to legal persons and real estate transactions, notaries are a critically important gatekeeper in Spain. It is therefore a concern that there have been rare cases where notaries were used in criminal money laundering operations.

5.43. **Other DNFBPs seem in general to have a sound understanding of the particular ML/TF risks, and to have implemented appropriate mitigating measures:**

- a. **Casinos** have historically been tightly controlled in Spain, and remain a small and closely-supervised sector. Based on this, and the low average amount spent (EUR 80) and the high taxes on winnings (50%), the sector does not see itself as a high risk of ML/TF. Casinos will only pay out in cash. Paying out by cheque is only allowed a few times per year and remittances into a bank account occur rarely. However, the assessment team do not fully share this view, given that cases of ML through the Spanish casino sector have been detected. For example, see *Vulnerabilities of Casinos* (FATF and APG, 2009) Cases 8, 10, 16 & 18. Moreover, even though there are tight controls, including on licensing or changes of shareholders, a ML/TF risk remains, especially when criminals set up a casino or invest in casinos. As referred to in *Judgment AN 3584/2012*, there has been a case where a criminal organisation invested illicit funds in companies in Spain and abroad to acquire boats, real estate properties, and conducted investments in casinos.
- b. **Online gambling** has only recently been legalised in Spain, and remains subject to strict supervision. Given the heightened risks of online gambling, Spain has introduced centralised systems for identifying and verifying the identity of customers, based on national identity information held by the supervisor. Online gambling firms are also aware of specific risks, e.g., of the use of pre-paid cards.
- c. In the **real estate sector**, both agents and developers are obliged entities under the *AML/CFT Law*. They use the risk indicators provided by the Commission, and supplement these with risk indicators based on the characteristics and behaviour of the client. Major real estate agents and developers seem to have a good understanding of the risks. However, their understanding has been developed internally by the real estate firm, as the sector has limited supervision and no national bodies which could raise awareness or provide advice, good practices, risk indicators, and training. It is therefore unlikely that smaller-scale agents and developers have the same level of understanding of the risk or apply equivalent controls.
- d. **Accountants and auditors** comply in a formal way with their AML/CFT obligations, and show a low awareness of ML/TF cases they may detect while performing their work. Accountants are also hired as external experts to audit the AML/CFT system of obliged entities. In that capacity they show a high level of knowledge of the level of compliance in the various sectors. Forensic accountants that investigate fraud cases do not consider that

5 Yarrow, G., Prof. and Dr. C. Deckert (2012).

fraud is linked to ML.

- e. **Trust and Company Service Providers** are considered very high risk sector by SEPBLAC in their supervisory risk assessment (given the risks associated with the use of shell companies). This relatively small sector (19 entities) is not subject to intensive supervision, but its risks are mitigated because the transactions related to the services they provide have to go through notaries who are subject AML/CFT supervision. Since SEPBLAC has not yet focused its supervisory attention on TCSPs, there is no information available on the level of compliance in this sector.

(b) *CDD and Record-Keeping*

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5.44. **Most sectors take a formal approach to compliance with the CDD and record-keeping requirements.** The risk-based approach in this area is focused on profiling the risk posed by customers, taking into account the products or services involved, and any general indicators (e.g., if non-resident customers or high risk countries are involved in the business relationship). Large banks have a more sophisticated approach to risk, whilst smaller banks, securities and insurance companies apply the law and guidance in more of a “checklist” approach, and will hardly take a risk-based approach except for those instances allowed by law. In general the risk appetite is very conservative. Obligated entities indicated a high level of support for preventative measures, but a lower level of knowledge of risk generally, suggesting that some risks may not be adequately understood and therefore mitigated inadequately, and *vice versa*.

5.45. **All obliged entities interviewed by the assessment team normally perform basic CDD using the documents prescribed by law,** check the purpose and nature of the business relationship by closely following the risk indicators from the *catalogues* (often importing these risk indicators directly into their policies and procedures or using it as a checklist), and (where necessary) check the source of funds by way of documented proof of source. Most non-bank financial institutions and DNFBPs rely to some extent on banks as a gatekeeper, for example, many securities and insurance firms’ products are sold to customers through their associated bank, and some obliged entities will not always look into the legitimacy of the source of funds and merely check that the money is transferred via a bank.

5.46. **Supervisors have identified some deficiencies in the implementation of CDD measures.** In the banking sector these mainly result from the consolidation process, as customer files and IT systems were found to be incomplete or out of date following mergers and take-over of some smaller banks. Some shortcomings have also been detected, concerning information on the customer’s beneficial owner and the level of detail in customer files kept by banks. These problems led the Bank of Spain to order several banks to remedy CDD deficiencies by reviewing the customer files and bringing them into line with current legal requirements by the end of 2014.

5.47. **There seem to be no significant issues with record keeping, which is normally required for ten years.** Authorities report that they have good access to information. SEPBLAC indicated that with a few DNFBPs, such as jewellers and real estate agents, they have found some deficiencies with respect to record keeping, but these do not seem to be system-wide problems.

5.48. **Ongoing monitoring is also a routine activity for obliged entities.** Entities conducting more than 10 000 transactions per year are required to have an automated system for monitoring and generating alerts: *RD 304/2014 art.23*. Banks use either in-house or commercially-developed transaction monitoring systems, which may trigger more detailed monitoring (e.g., a review of the source of funds), based on the risk profile and activities of the customer. Insurance companies also use automatic systems to monitor customers’ activities and transactions.

5.49. **All obliged entities are aware that information on the beneficial owner needs to be obtained and generally do so in the manner prescribed by the law, albeit unevenly across the different professions** despite the fact that the current requirements were introduced in 2010.

5.50. **The notary profession’s Single Computerised Index (described in Box 7.1) represents real progress in this key gatekeeper sector.** Set up in 2004, the Index contains a wealth of information, including

(since March 2014) the names of beneficial owners of new Spanish companies and other companies that conduct an act before a notary. This recent initiative focuses more on recording the ultimate beneficial owner and less on the intervening entities or arrangements that stand between the corporation and its beneficial owners. It does not include so much information on the overall structure of ownership and control although information on intervening or intermediary entities may still be obtained through the record of transfers of shares in the case of Spanish companies. This is less of an issue for law enforcement where beneficial ownership is Spanish than where a foreign entity or a legal arrangement is present and it remains a challenge for Spain (as for other countries) to meet the requirements to identify the beneficial owner.

5.51. **There is nevertheless scope to strengthen the CDD conducted by notaries on the beneficial ownership of companies.** Notaries are required in all cases to identify and record the beneficial owner of a newly incorporated entity or of an entity that intervenes in a notarial act, on the basis of a declaration made by the company's representative. In practice, the identity of the beneficial owner is only verified when two or more risk indicators are met using a copy of an identification document instead of original documentation or of information from reliable independent sources. Due diligence conducted by an individual notary does not normally include verification of the status of the beneficial owner, or examination of the chain of ownership to the ultimate beneficial owner. This could indicate that customer due diligence is conducted in a formalistic way rather than on the basis of a clear understanding and assessment of the facts, and that beneficial ownership information declared by the company may be included in the Single Computerised Index without full verification by notaries that it is correct. This is compensated to some extent by the fact that CDD by notaries is complemented by other information already available in the notarial database (e.g., information on transfers of shares of SLs). Recently issued procedures establish the measures that notaries should take to verify the identity and status of the beneficial owner in instances where one or more risk indicators are met. However, considering that they were issued after the onsite mission, these procedures cannot be taken into account for rating purposes in the context of the current assessment.

5.52. **The real estate sector indicated that customers from tax havens are often reluctant to provide information on the beneficial owner or the source of funds.** They experience problems in obtaining the right information from clients and attribute this to the fact that clients are not (yet) accustomed to providing information to real estate agents (in contrast to banks where there is a more established culture of providing information). In those cases where information cannot be obtained, the client will be refused service, which is in line with the standards.

5.53. **The authorities have issued little or no guidance to the obliged sectors relating to trusts, despite the use in recent ML cases of complex networks of companies and trusts constituted in nearby off-shore centres.** LEAs confirmed that these cases, although few in number, were frustrating to investigate because of the difficulty in obtaining further information from the relevant authorities. Royal Decree 304/2014 requires obliged persons to identify and verify the identity of "*the settlor, the trustees, the protector, the beneficiaries and of any other natural person who exercises ultimate effective control over Anglo-Saxon trusts, even through a chain of control or ownership*". This also applies to other similar legal arrangements. However, because trusts and other legal arrangements are not enforceable in Spanish courts, the obliged sectors do not often encounter them and therefore do not appear to focus on determining whether customers may be acting in a trustee capacity. Royal Decree 304/2014 also introduces a direct obligation on trustees (of express trusts) to disclose to obliged entities their status as such when opening a business relationship or participating in a transaction. This obligation entered into force during the on-site visit and thus the assessment team was not able to assess its implementation.

5.54. **Some specific measures to deal with high-risk activities or entities generally seem to be well observed by the financial and DNFBP sectors - though in this area, more detailed requirements in Spain were updated (in some cases significantly) during the onsite.** This means implementation of some measures was incomplete. In addition, as noted above, other measures are not yet fully developed into guidance.

5.55. **With respect to the implementation of preventive measures applicable to PEPs, the picture is mixed.** Requirements for foreign PEPs are being implemented without significant problems, although in some cases financial institutions check whether a customer is a PEP only after their acceptance. However, the requirement to identify domestic PEPs is a new feature in the law, introduced in December 2013. All

institutions indicated having major problems with these requirements, stating that commercial PEP databases do not have information on domestic (or international institution PEPs). It appears that many obliged entities are not yet aware of the risk-based approach taken by Spain to domestic PEPs. The inclusion of mayors is a partial response to the risks (particularly of corruption related to land development). As mentioned in Box 7.1, work is underway by the OCP to develop a database of domestic PEPs. The OCP indicated that they will also be able to add close associates based on the fact that since 2004, every politician has had an opportunity to visit a notary and from that information the OCP will have information on close associates. Additionally, from the civil and birth registry family members can be added.

5.56. **The requirements relating to correspondent banking and new technologies appear to be implemented without any difficulties, with appropriate measures in place to mitigate these risks.**

This includes requirements for MVTS to make their transfers through bank accounts both in the destination country and in any other in which the overseas correspondents or intermediate clearing systems operate. All FIs and DNFBPs interviewed take account in practice of higher risk countries as indicated by the FATF as well as the tax havens indicated in Royal Decree 1080/1991, and these are integrated into customer risk profiling systems. Several banks and MVTS indicated that they also have identified other high risk countries for which they will apply enhanced measures. Pre-paid cards have been identified as higher-risk technology, as have some internet payment systems. However, one bank that the team met with was not aware that it issues pre-paid cards itself. It is therefore questionable whether the banking sector is sufficiently aware of the ML/TF risk of new technologies.

5.57. **With respect to higher risk countries, legislation defining these came into effect during the on-site visit (RD 304/2014) and therefore the assessment team were unable to evaluate how well the new legal requirement is being implemented.** However, there is a widely held view in the private sector that customers and transactions originating outside Spain present higher risks.

5.58. **The legal framework for wire transfers, as noted above, suffers from major gaps because the current EU Regulation does not require the details of beneficiaries to be included in transfers.**

The assessment team understands that some payment systems and financial messaging services (including SWIFT and TARGET2) have updated their messaging systems to require all sending financial institutions to enter some beneficiary information in every wire transfer, although only the IBAN (international bank account number) of the beneficiary is required, and other information (including the beneficiary name) is not mandatory. However, SWIFT does not screen or check wire transfers for the validity of beneficiary information. Hence, provided that any text (even meaningless spaces or symbols) is inserted in the appropriate fields, the transfer will go through (as these are processed in real time).

5.59. **All the obliged entities the team met with screen their customers' names periodically against the sanctions lists.** SEPBLAC has done a thematic inspection of 15 banks for compliance with sanctions obligations, and identified some issues with providing information on alerts to SEPBLAC. External auditors have also indicated that some improvements could be made with respect to the timely screening of customers against the sanctions list, since (as with PEPs) in some banks, screening is done only after acceptance of the customer.

(c) Reporting suspicious transactions

5.60. **In general, suspicious transaction reporting from obliged entities appears to be satisfactory.**

There is some variance in levels and quality of reporting between sectors and the absolute number of STRs is relatively low for a country of Spain's size. However, in general reports are considered to be useful, and a high proportion of STRs are disseminated (noted under IO.6), so a low absolute volume perhaps does not indicate a problem, and may instead reflect the *special review* which obliged entities are required to conduct before filing an STR. The special review involves a structured analysis of the potentially suspicious activity along with all related operations, all parties involved in the transaction and all relevant information held by the obliged entity or group, and a decision by the reporting officer on whether an STR should be submitted. This process seems to help eliminate "false positives" and defensive reporting, and to facilitate the aggregation of information into a single STR: *AML/CFT law art.17 and RD 304/2014 art.25*. The statistics showing the number of STRs filed are not reflective of the number of individual transactions that each STR represents. Given the comprehensive nature of the special review process, the reports filed with SEPBLAC routinely

involve a high number of individual transactions (e.g., STR 3310/2014 involves 153 separate transactions), which means that the level of STR reporting is not as low as it might otherwise appear. Some obliged entities will focus more on cash or foreigners than others, and some mainly file reports originating from their automated monitoring systems, while others rely on manual reports from employees. Nevertheless, the high quality of STRs is accredited by the low percentage of archiving by SEPBLAC (below 20%), and the high exploitation rate of SEPBLAC reports by LEAs, both quantitatively (over 40%) and qualitatively (several of the most significant ML/TF investigations have been driven by SEPBLAC's financial intelligence reports which are based on the STRs filed by FIs and DNFBPs).

5.61. STR reporting relating to TF is seen as high quality. Spain has had several TF cases in which STRs played an important role. Banks show a high awareness with respect to terrorism and TF, for instance by only allowing payments from government into NGOs. Spain is to be commended for this.

5.62. **Notaries use a central prevention body (the OCP), allowed in Law 10/2010, as an intermediary step in considering the submission of an STR.** All notaries must upload all notarial acts and all relevant information into the OCP's centralised database (the Single Computerised Index - see Box 10) which includes a comprehensive list of risk indicators established by the OCP and SEPBLAC. Any transaction that includes risk indicators is reported to the OCP, which reviews the transaction using its own databases and analytical tools, and advises the notary on whether an STR should be submitted. The OCP also monitors all transactions entered in the central system to detect unusual transactions or groups of transactions. Approximately 40% of notaries' STRs come from this automated risk alert system, and 60% of STRs are reported by the notaries directly.

5.63. **The following statistics show the number of STRs received annually by SEPBLAC in the past three years.** More than 75% of STRs are generated by financial institutions. As a result of the recent consolidation of Spain's banking sector, the number of savings banks dropped significantly (from 44 in 2010, to 6 in 2012) and the number of commercial banks reporting rose (from 33 in 2010, to 43 in 2012), which explains the reporting fluctuations in these sectors. The number of reports from payment entities has continued to rise, mainly in response to an intensive campaign of supervisory and awareness-raising activities in response to the identified risk of ML through money transfers.

5.64. **Most of the reporting in the DNFBP sectors comes from notaries and registrars.** Overall, reporting has decreased in these sectors (by 7.4% in 2011, and by a further 9.1% in 2012). The authorities attribute this to the economic downturn which caused a collapse of the Spanish real estate market and reduced company activity. One missing source of reports is from forensic accountants that investigate fraud cases, who do not consider that fraud is linked to ML.

Table 5.1. STRs received by SEPBLAC

	2010	2011	2012
Breakdown by type of financial institution			
Banks	1 062	1 258	1 792
Savings banks	822	448	13
Credit cooperatives	138	139	128
Spain-based branches of EU-registered financial institutions	51	51	36
Spain-based branches of non-EU financial institutions	3	5	10
Lending establishments	6	13	12
Payment entities (including MVTS/currency exchange managers)	286	372	441
Investment services firms and their branch offices	15	9	4
Life assurance companies	11	16	10

Table 5.1. STRs received by SEPBLAC (continued)

	2010	2011	2012
Insurance brokers	0	0	1
Collective investment institution management companies	4	0	2
Mutual guarantee companies	1	0	0
Private equity management companies (SGECRs)	1	0	0
Credit card issuers	11	2	0
Total number of STRs received by financial institutions	2 411	2 313	2 449
Breakdown by type of DNFBP			
Notaries	247	182	182
Registrars of land, companies and personal property	98	200	129
Lawyers	39	31	25
Auditors/accountants/tax advisors	6	5	8
Gambling establishments	7	2	5
Operators of lotteries and other games of chance	0	0	1
Property developers, brokers, and dealers	23	18	15
Jewellers	9	21	20
Art and antiques	5	0	1
Cash transport professionals	26	39	73
Postal services (international giros cash or transfers)	120	39	14
Trading in goods and assets (Article 2.1W)	0	0	13
Companies under Article 2.1(o)	0	0	2
Total number of STRs received by non-financial institutions	580	537	488
Total number of STRs received by other sources, including domestic and foreign supervisory bodies, other individuals and corporations	180	125	121
Total number of STRs received by SEPBLAC	3 171	2 975	3 058

Source: Committee for the Prevention of Money Laundering and Monetary Offences (2012) at Table 1 (Total STRs received annually by SEPBLAC) (p.9), Table 4 (Distribution of STRs received from financial institutions by type of entity subject to the reporting duty) (p.12), Table 5 (Distribution of STRs received from non-financial entities by type of entity subject to the reporting duty) (p.14).

5.65. **Tipping off does not seem to be a major problem, but there are some concerns.** Obligated entities generally have policies regarding tipping off. When a court order is classified secret, they will keep the information request from the branches in order to avoid any possibility of tipping off. In addition, prosecutors are concerned about the possibility of tipping off when information is obtained from banks, especially if the central compliance unit in a bank must contact the local branch to collect all the requested data. Police also commented on a few minor ML investigations (e.g., local, small scale investigations) where tipping off had occurred.

(d) Internal controls

5.66. **Obligated entities (with some exceptions for smaller entities) are required to have internal controls and procedures.** These are a key focus of guidance and inspection by supervisors. SEPBLAC has drawn up recommendations on internal AML/CFT control measures, and conducted outreach to inform financial institutions and DNFBPs of them.

5.67. **Among financial institutions, internal controls are the main focus of AML/CFT inspections by the Bank of Spain, CNMV and DGSFP.** Some shortcomings have also been detected concerning information on the customer's beneficial owner and the level of detail in customer files kept by banks. Weaknesses have been identified in the process for reviewing and updating CDD records and bringing the information held up to the level required by current law. These problems are largely attributed to difficulties integrating and harmonising IT systems, controls procedures, and training following mergers and acquisitions within the banking sector. Insurance supervisors have also found that deficiencies identified during their AML/CFT inspections were caused by a lack of internal controls.

5.68. **Financial institutions, including those with operations outside the EU, told the assessment team that they extend their internal controls to such operations.** They indicated that it was difficult to obtain from their branches or subsidiaries in some countries, the information needed to verify compliance with their standards (due to privacy or data protection laws), which made the implementation of internal controls group-wide more complex. Where the risks were too difficult to mitigate, one bank exited a country where it was particularly problematic to apply Spanish standards effectively. Finally, the extent to which large banks oversee their foreign operations varies. One such bank indicated that their head office does not audit their foreign operations.

Overall conclusions on Immediate Outcome 4

5.69. **The overall strength of the preventive measures applied by Spain's financial institutions is most notable in the banking sector.** The banking sector has developed a good understanding of its ML/TF risks and applies the AML/CFT measures according to the risks. The sector has a low appetite for risk, and seems conscientious in its application of AML/CFT obligations. The controls applied by this key sector seems to be relatively strong, although some improvements are needed.

5.70. Consolidation has left Spain's banking sector with fewer, but larger banks, mostly able to implement sophisticated, professional, and risk-based AML/CFT controls - although they have not fully completed the processes of integrating their systems following consolidation and bringing customer files into line with the current legal requirements. Additionally, most banks need to update their procedures to account for the new obligations such as domestic PEPs. There are variations in the effectiveness of group oversight at institutions with branches and operations outside Spain.

5.71. **Of the other financial institutions, the MVTS sector has strengthened its preventive measures in response to past criminal exploitation, in particular to mitigate the risk of bad agents by keeping a register of these agents.** MVTS providers have been working with the authorities to enhance the AML/CFT measures, such as stronger CDD, lower limits on cash transactions and systematic reporting to the FIU of all transactions. The risk awareness of the MVTS sector is uneven: despite good awareness of specific risks involved in MVTS operations, the MVTS sector believes its general risk level to be low relative to other sectors. The insurance and securities sectors have a basic but limited awareness of the risks, follow a rules-based approach to the implementation of preventive measures, and most rely on their associated banks and on notaries as their principal AML/CFT safeguard.

5.72. **Of the DNFBPs, the strengthening of the preventive measures is most notable within the notaries sector.** The notaries sector has made significant progress as a result of the establishment of the OCP (a centralised prevention unit), which has raised awareness and capacity throughout the sector. Also, the development of elaborate risk indicators and additional STR reporting through the OCP has promoted a good understanding of its ML/TF risks and level of compliance. Although they generally conduct adequate CDD and

know who the ultimate beneficial owner is, there is some room to further strengthen the scrutiny notaries give to beneficial ownership and the overall structure of ownership and control.⁶

5.73. The effective implementation of preventive measures varies across the other DNFBP sectors. In general, the real estate, accountant and auditors and casino sectors seem to adequately apply the required measures, but do not have a risk-based or proactive approach. Lawyers seem to be an outlier, with limited awareness of their ML/TF risks and obligations, and little evidence that effective controls are in place. The authorities have not paid any attention to the supervision of TCSPs, and therefore their level of understanding of ML/TF risk and AML/CFT compliance is likely limited.

5.74. **The wide variety of understanding of the risks, and the resulting wide variations in how the risks are managed, suggests the obliged sectors exhibit, overall, an uneven range of effectiveness in the implementation of preventative measures.** The understanding of the risks and the concomitant controls needed seem strongest in the banking sector, although some larger banks do not yet oversee their foreign operations to a group-wide standard. Notaries have a good understanding of the risks, and have taken adequate mitigating measures, although some CDD measures could be improved further. If assessed separately, both these sectors would be rated higher than all the obliged sectors as a whole. Of all the obliged sectors, the legal sector is at a low level of effectiveness.

5.75. **For all obliged sectors, there are some systemic issues relating to understanding and mitigating the risks relating to legal arrangements, trustees and lawyers.** Measures on high risk countries and domestic PEPs cannot yet be evaluated. Wire transfers are not yet subject to rules compliant with FATF Standards. It therefore seems that overall there is still some way to go before the obliged sectors as a whole exhibit a substantial level of effectiveness.

5.76. **The assessment team weighted the banking and notaries sectors as most material for the level of compliance of all obliged sectors.** In the case of banks this is largely because of their understanding of the risks, and to some extent the structure of the financial sector where banks, insurance and securities companies are part of a conglomerate group; and in the case of notaries, it is because they are legally required to be involved in a wide range of acts and transactions, including real estate transactions and the formation of legal persons. Nevertheless, even in these two sectors moderate improvements are still necessary.

5.77. **In all other financial and DNFBP sectors, major improvements with regard to understanding the ML/TF risk and the RBA are required,** and with the lawyers and TCSPs even more fundamental improvements are necessary.

5.78. **The overall rating is moderate for Immediate Outcome 4.**

5.4 Recommendations on Preventive Measures

5.79. Reflecting the relative strength of AML/CFT controls applied by the banking sector and notaries, Spain should prioritise measures to improve AML/CFT controls in the other sectors, particularly among the DNFBPs.

5.80. Spain should enhance its dialogue with the MVTS sectors to enable operators to better understand the risks to which they may be exposed by certain types of customer and business, and how to mitigate those risks in line with the RBA. Spain should also conduct outreach to the banking sector to ensure that there is a good understanding of the specific risks and risk mitigation measures in Spain's MVTS sector, and to

6 As mentioned above, additional scrutiny is now required when one or more risk indicators are met, but, because the additional requirements came into force after the onsite mission, their impact could not be tested and cannot be taken into account for the purposes of the current assessment.

encourage banks to continue to provide banking services and apply AML/CFT controls to the relationships with MVTs providers commensurate with the level of identified risks, and in line with the RBA.

5.81. Spain should encourage the non-bank financial sectors and DNFBBs to broaden their understanding of the RBA, and conduct outreach to improve their understanding of the risks.

5.82. SEPBLAC and the Centralised Prevention Unit of the notaries should ensure effective implementation of the new procedures (that were introduced following the on-site visit) for notaries when verifying the identity of high-risk customers and beneficial owners of legal persons, by requiring the use of external sources of information and recording of the ownership structure of the company, including enhanced verification procedures in high risk operations (i.e., where more than one risk indicator is present): *RD 304/2014 art.9.2.*

5.83. Spain's legal system has historically not recognised the concept of trusts and such arrangements are not enforceable in Spanish courts. For these reasons, foreign trusts and legal arrangements, as well as the Spanish *fiducia*, are not very frequently used. The obliged sectors (except for the banking sector) met with by the assessment team have little to no experience in dealing with customers who may be acting as trustees. Spain has introduced an explicit obligation on trustees of express trusts⁷ to self-identify when dealing as such with obliged entities or participating in transactions. This measure may potentially mitigate the risk that obliged entities may not adequately ascertain that they are dealing with trustees. In addition, trustees are subject to the AML/CFT obligations in their own right. Spain is to be commended for introducing these explicit obligations on legal arrangements into its *AML/CFT Law*. However, given there remains a lack of experience in Spain in dealing with trusts (including the fact that trusts cannot be formed under Spanish law), the authorities should develop and issue guidance for the financial and DNFBB sectors on beneficial ownership by trusts, trustees and legal arrangements. Further, as noted in the recommendations under Immediate Outcome 7, Spain has faced many cases involving lawyers who are complicit in setting up and managing complex ML schemes. Given the nature of trustees' responsibilities, it is likely that lawyers will most often be acting in the role of trustee where a trustee in Spain is appointed. Guidance should therefore also be considered for trustees on their general and disclosure obligations.

5.84. Supervisors should intensify outreach and inspection of the legal and TCSP sectors, and in particular raise awareness of risks and AML/CFT obligations among members of these professions. Authorities should work with the representative associations of these professions to consider how to do this.

5.85. Anti-tipping off measures and awareness should be strengthened within FIs and DNFBBs to ensure that information on STRs and police investigations is not communicated to the subjects under investigation.

5.86. Spain should prioritise guidance on high-risk countries, territories and jurisdictions and other regulatory changes including domestic PEPs following the coming into force of provisions in Royal Decree 304/2014 relating to these.

5.87. Spain should work through the EU to promptly update the wire transfer regulations to implement new obligations enforceable in Spain relating to information on the beneficiary and the responsibilities of intermediary financial institutions.

7 These are called "Anglo-Saxon trusts" in Spain's law.

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5. PREVENTIVE MEASURES

Recommendation 9 – Financial institution secrecy laws

a5.1. In its 3rd MER, Spain was assessed as compliant with these requirements (para.380), and the *FATF Recommendations* in this area have not changed. Revised legislation since 2006 has given Spain the opportunity to strengthen and clarify the requirements for the sharing of information for AML/CFT purposes.

a5.2. *Criterion 9.1.* Financial institution secrecy laws do not appear to inhibit the implementation of AML/CFT measures. Spanish FIs/DNFBPs are required to maintain customer confidentiality, and are subject to data protection provisions. However, the *AML/CFT Law* includes a range of provisions to prevent these obligations from interfering with the exchange of information for AML/CFT purposes, and requires mandatory sharing of information in defined circumstances. These apply in all three areas of particular concern set out in the Methodology:

- a. Access to information by competent authorities is ensured through a general obligation on regulated entities to provide documents and information to the Commission, its support bodies, or other competent authorities.
- b. Sharing of information is ensured through specific requirements for information sharing by supervisors and other relevant authorities. There is also a general obligation on any authority or official to report evidence of ML/TF to SEPBLAC.
- c. Sharing of information between FIs is supported by specific measures to permit the exchange of information for the purposes of preventing ML/TF when it would otherwise be prohibited. Notably, information on a suspicious transaction can be shared with another regulated FI if there is reason to believe that the rejected transaction to which it relates may be attempted elsewhere. The *AML/CFT Law* also exempts the processing and sharing of information from a number of the requirements of Spain's law on the protection of personal data, if it is required for AML/CFT purposes. Specific provisions are included in regulation to allow exemptions from data protection requirements, which would permit obliged entities to exchange information on certain types of transactions or clients, and to use common files for sharing this information: *RD 304/2014, art. 61.*

a5.3. *Weighting and conclusion:* Spain meets the criterion of R.9. **R.9 is rated compliant.**

Customer due diligence and record-keeping

Recommendation 10 – Customer due diligence

a5.4. In its 3rd MER, Spain was rated partially compliant with these requirements, and the MER identified seven deficiencies (para.338-370). Spain exited the follow-up process in 2010 on the basis that many of these had been adequately addressed, largely as a result of changes introduced in the *AML/CFT Law*, though some deficiencies remained. R.10 was subject to significant revisions in 2012, and the *AML/CFT Law* was amended in December 2013 to address some of the new requirements of R.10.

a5.5. *Criterion 10.1.* The use of anonymous accounts, numbered accounts, or accounts in fictitious names is prohibited.

a5.6. *Criterion 10.2.* CDD is required before entering a business relationship or executing any transactions. Exemptions are permitted for occasional transactions below a EUR 1 000 threshold. CDD is also required in

PREVENTIVE MEASURES

the circumstances covered by C.10.2 (c) to (e): *AML/CFT Law art.7.6, RD 304/2014 arts.4, 9.*

a5.7. *Criterion 10.3.* Identification and verification are required of all “participants” in a business relationship or transaction, using “reliable and irrefutable” documentary evidence (of a type specified in regulation): *AML/CFT Law art.3.2; RD 304/2014, art.6.* A “participant” (*Interviniente*) in a transaction is considered to be a wider concept than “customer”, and includes both natural and legal persons, legal arrangements, and persons depositing funds on behalf of somebody else.

a5.8. *Criterion 10.4.* There are specific requirements to verify the identity and authorisation of legal or voluntary representatives. The general identification requirement applies to “participants” rather than “customers” and therefore also encompasses persons acting on behalf of the customer. Specific CDD requirements also apply to trusts, *fiducias* and other legal arrangements: *AML/CFT Law art.3.2; RD 304/2014 art 6.*

a5.9. *Criterion 10.5.* Financial institutions are required to identify the beneficial owner and take appropriate steps to verify their identity and status before entering a relationship or executing an occasional transaction. This includes a requirement to gather the information required to find out the identity of the persons on whose behalf the client is acting. The act defines the “beneficial owner” in a manner which is compatible with the FATF’s definition of beneficial ownership¹: *AML/CFT Law art.4, RD 304/2014 art.8.*

a5.10. The definition of “beneficial owner” in the *AML/CFT Law* (art 4.2) includes an exemption for companies listed on a regulated market of the EU or equivalent third countries (included on the EU “Equivalence list”). However RD 304/2014 states that identification shall not be required regarding shareholders and beneficial owners of listed companies or of their majority-owned subsidiaries if they are subject to disclosure requirements which ensure adequate transparency of their beneficial ownership. For EU countries which fully implement Directive 2004/109/EC (on the harmonisation of transparency requirements), this exemption seems consistent with R.10. For other countries, the requirements of the regulation implement the requirements of R.10.

a5.11. *Criterion 10.6.* Financial institutions are required to understand the purpose and intended nature of the business relationship, to obtain information on the nature of their clients’ activities, and to take graduated steps, on the basis of risk, to verify this information: *AML/CFT Law art.5, RD 304/2014 art. 10.*

a5.12. *Criterion 10.7.* General requirements for ongoing monitoring include scrutiny of transactions to ensure they are consistent with the customer’s business and risk profile (including the source of funds), and to ensure that documents, data, and information are kept up-to-date. Specific measures set out in regulation require increased monitoring in higher-risk cases, and require at least an annual document review in such cases. General provisions about enhanced due diligence (EDD) and unusual transactions also apply in the context of ongoing due diligence: *AML/CFT Law art.6, RD 304/2014 art.11.*

a5.13. *Criterion 10.8.* There is a general requirement to identify the ownership and control structure of legal persons: *AML/CFT Law art.4.4.* The general requirement to understand the purpose and nature of the business relationship applies to all customers, including legal persons and arrangements: *art.5.* Due diligence measures must be applied to trusts and other legal arrangements, a concept that according to the authorities includes *fiducias*: *AML/CFT Law art.7.4.*

a5.14. *Criterion 10.9.* Legal persons must provide public documents evidencing their existence, company

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1 A beneficial owner is defined as: “the natural person(s) (a) on whose behalf the relationship is to be established or the transaction conducted, or (b) who ultimately owns or controls (direct or indirect) 25% or more of the capital or voting rights or who, by other means exercises control, directly or indirectly controls, over the management of a legal person (c) who owns or controls 25% or more of the property of a legal arrangement, or, where the beneficiaries have yet to be determined, the class of persons in whose interest the legal arrangement is set up”. Further detail is included in RD 304/2014, art.8, which adds a requirement to identify the senior managing official in cases where no beneficial owner is identified under other parts of the definition.

name, legal form, address, directors, articles, and tax ID number. Trustees of trusts or similar legal arrangements are required to report their status, and must provide the founding document of the arrangement. Trustees are also included within the general requirement to verify the identity and authorisation of legal or voluntary representatives (noted above in relation to 10.4): *RD 304/2014 art.6*.

a5.15. *Criterion 10.10.* This requirement is implemented as part of the definition of a beneficial owner in article 4.2(b) of the *AML/CFT Law*, as described in criterion 10.5. Where these do not lead to the identification of the beneficial owner, Spain's law requires the FI not to enter into a business relationship or execute the transaction: *AML/CFT Law art.7.3, RD 304/2014 art. 8*.

a5.16. *Criterion 10.11.* This requirement is embedded in the definition of beneficial owner within the *AML/CFT Law*.² In the case of trusts the regulation requires identification of the settlor, trustees, protector, beneficiaries, and any other natural persons exercising control over the trust. For other relevant legal arrangements (including *fiducias*), the persons holding equivalent or similar positions must be identified: *RD 304/2014 art. 9.5*

a5.17. *Criterion 10.12.* The beneficiaries of life insurance policies are considered to be "participants" in the business relationship, and therefore must be identified in the course of CDD. There is a specific exemption from up-front verification of identity for beneficiaries of life insurance policies. But in all cases, the identity of a beneficiary of a life insurance policy (including generically designated beneficiaries) must be verified before the payment of the benefit or the exercise of any rights under the policy, consistent with part (c) of the criterion: *AML/CFT Law art.3(3), RD 304/2014 art. 5*.

a5.18. *Criterion 10.13.* The identity of the beneficiary must be verified before pay-out in all cases. Spain also requires the beneficiary of a life insurance policy to be included among risk factors considered when determining if enhanced CDD is required, and for the identification of the identity of the beneficial owner of the beneficiary: *AML/CFT Law art.3.3, RD 304/2014 art. 20.2*.

a5.19. *Criterion 10.14.* The identity of the participants must be verified before entering into the business relationship. For non-face-to-face business³ verification may be delayed. In such cases, additional due diligence measures are also required if the FI perceives the risk to be above the average risk level. Elements (a) and (c) of the criterion seem to be met explicitly, and element (b) is met implicitly, since delayed verification is essential not to interrupt the normal conduct of business in a non-face-to-face business situation: *AML/CFT Law arts. 3.2 & 12; RD 304/2014 art.4.2*.

a5.20. *Criterion 10.15.* The controls applied in cases of non-face-to-face business when verification is delayed require additional due diligence measures in cases where the risks are above average. Financial institutions are required to establish policies and procedures to manage the risks associated with non-face-to-face business relationships: *AML/CFT Law art.12.2; RD 304/2014 art.4.2*.

a5.21. *Criterion 10.16.* Financial institutions are required to apply CDD measures to existing customers, on a risk-sensitive basis, and when they contract new products or undertake transactions which are significant for their volume or complexity: *AML/CFT Law art 7.2*. CDD measures should also be applied to all existing customers within five years of the time the *AML/CFT Law* came into force (30 April 2010).

a5.22. *Criterion 10.17.* Financial institutions are required to apply enhanced due diligence (EDD) in higher-risk situations specified in the *AML/CFT Law* or in regulations, or in other situations which present a higher

2 "(c) Natural person or persons who ultimately own or control over 25 per cent or more of the property of a legal arrangement or entity that administers or distributes funds, or, where the beneficiaries of a legal arrangement or entity have yet to be determined, the class of persons in whose main interest it is set up or operates."

3 These provisions include: requiring that the first deposit originates from an account in the client's name in Spain, the EU, or an equivalent country; and undertaking documentary verification within one month of the start of the business relationship, with face-to-face identification being required if there is any discrepancy in the information available.

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risk of ML/TF. The situations where enhanced measures are required are:

- a. non-face-to-face business, cross-border correspondent banking, PEPs: *AML/CFT Law art.12-15*, and
- b. situations that by their nature can present a higher risk, including those listed in regulation (e.g., private banking, money remittance, foreign exchange operations, companies which use bearer shares): *AML/CFT Law art.11, RD 304/2014 art.19*.

a5.23. There is some overlap between these provisions and the requirement to pay special attention to complex or unusual transactions, transactions with no apparent economic or lawful purpose, or transactions which by their nature could be related to ML/TF: *AML/CFT Law art.17*. FIs are required to conduct a special review of such transactions (and consider filing an STR), and to establish internal policies and controls which set out which transactions will be reviewed, and what the review will consist of. The type of EDD measures to be applied is set out in the law (for non-face-to-face business, correspondent banking, and PEPs) and in the regulation (for other situations in which EDD is required): *RD 304/2014 arts.19-20*.

a5.24. *Criterion 10.18*. The degree to which some CDD measures are applied (identification of the beneficial owner, the purpose and nature of the relationship, and ongoing monitoring) is to be determined on a risk sensitive basis: *AML/CFT Law art.7*. Financial institutions are required to demonstrate that the extent of measures is consistent with the risks, through a documented analysis. All CDD measures are required in cases when there is a suspicion of ML/TF. Information is included in regulation on the types of situation which could be considered low-risk and on what implementing the CDD measures to a lesser degree might consist of: *RD 304/2014 art.15-17*.

a5.25. The law includes a general provision that simplified CDD measures may be applied with respect to those customers, products, or transactions which involve a low risk of ML/TF. A graduated approach must be applied to the application of simplified measures, which includes: (a) verifying that the customer/product/transaction involves a low risk; (b) applying measures consistent with the risk, and ceasing simplified measures as soon as they perceive the customer/product/transaction does not involve a low risk; and (c) maintaining sufficient monitoring to detect transactions which require special attention. Together, these requirements seem consistent with those of R.10: *AML/CFT Law art.9*.

a5.26. *Criterion 10.19*. Financial institutions are not permitted to enter into a business relationship or execute a transaction, in cases where the required CDD measures cannot be applied: *AML/CFT Law art.7.3*. For existing business relationships, where CDD measures cannot be completed, financial institutions are required to terminate the business relationship and a special review is required. The *special review* is the normal preliminary step to the submission of a STR, and it involves considering making a STR. For a new customer or occasional transaction, where CDD cannot be completed, there is no direct requirement to conduct a special review. However, such cases still fall within the general requirement that an STR must be submitted (preceded by a special review), regarding “*any act or transaction, even the mere attempt, regarding which ... there is any indication or certainty that it bears a relation to money laundering or terrorist financing*”: *art.18*. This applies to those cases where the inability to complete CDD in itself constitutes an indication of ML/TF, but still falls short of the requirement to consider an STR in all cases where CDD cannot be completed.

a5.27. *Criterion 10.20*. Spain’s regulation requires financial institutions to take account of the risk of tipping-off, and allows them to not pursue the CDD process in situations where it process may tip-off the customer. However, there is no requirement to consider an STR in all cases where CDD cannot be completed: *RD 304/2014 art.12*.

a5.28. *Weighting and conclusion*: In terms of scope, all of the required sectors and activities are included. Following the adoption of Royal Decree 304/2014, most elements of R.10 are in place, however there is one remaining deficiency. There is no requirement to consider an STR in all cases where CDD cannot be completed (10.20), although the general STR and special review obligations do partially address this requirement. **R.10 is rated largely compliant.**

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Recommendation 11 – Record-keeping

a5.29. In its 3rd MER, Spain was rated as compliant with these requirements. However, the applicable law has changed, so a new analysis has been undertaken.

a5.30. *Criteria 11.1 & 11.2.* Financial institutions are required to retain documentation gathered for compliance with AML/CFT obligations for a minimum of 10 years: *AML/CFT Law art.25, RD 304/2014 art.29(2)*. This includes copies of documents obtained through the CDD process, and records of transactions and their participants. CDD records must be retained for 10 years after the termination of the business relationship, and transaction records for ten years after the execution of the transaction. The record keeping requirements also apply to business correspondence. A written record must be kept of any analysis undertaken by the financial institution, of a complex or unusual transaction, prior to reporting a suspicious transaction: *AML/CFT Law art.17*.

a5.31. *Criterion 11.3.* Financial institutions are required to hold transaction records in the form of an original or evidentiary copy admissible in court proceedings, of the documents or records duly evidencing the transactions, their participants, and the business relationship. Records must allow for the reconstruction of individual transactions, to provide evidence: *RD 304/2014 art.29*.

a5.32. *Criterion 11.4.* Financial institutions are required to have a record-keeping system which ensures proper management and availability of documentation for responding to the requirements of the authorities in a timely manner. Financial institutions are required to supply documentation and information requested by SEPBLAC, within the term specified in each case: *AML/CFT Law art.21*.

a5.33. *Weighting and conclusion:* Spain meets all four criteria of R.11. R.11 is rated **compliant**.

Additional Measures for specific customers and activities

Recommendation 12 – Politically exposed persons

a5.34. In its 3rd MER, Spain was rated non-compliant with these requirements. However, these issues were addressed through new legislation in 2010. Since then, the FATF Standards have changed, and Spain has further amended its legislation to implement the new requirements.

a5.35. Spain defines three categories of PEPs: persons who perform or have performed prominent public functions, through an elective office, appointment or investiture, in either: (a) an EU Member State or third country; (b) the Spanish State (or an international organisation); or (c) Spanish Autonomous Communities (or a Spanish trade union, employers' organisation or political party): *AML/CFT Law art.14.1*. In each case, the law lists examples of specific positions which should be considered PEPs. Spain's definition includes mayors of towns with a population of more than 50 000. The decision to limit the PEPs requirements to mayors and councillors of towns of more than 50 000 inhabitants was based on the relevance of the municipality's budget and potential real estate expansion, and the competencies and functions of the municipal government (as higher level functions and actions are required from towns with more than 50 000 inhabitants). This is in line with the FATF guidance on PEPs (which notes that in some cases a prominent public function may exist at municipal level), and with Spain's risk profile, given a number of cases of corruption of municipal office-holders relating to planning and development permits. Measures are required for two years after the person ceases to perform the relevant function (though risk-based EDD should continue to be applied where relevant). These definitions and the time limit appear consistent with the FATF definition of PEPs.

a5.36. *Criterion 12.1.* For foreign PEPs, FIs are required to implement the four additional measures set out in R.12 (risk management systems, management approval, establishing the source of funds, and ongoing monitoring). The text of the law closely follows the text of R.12: *AML/CFT Law art.14.2*

a5.37. *Criterion 12.2.* For domestic PEPs and PEPs from international organisations, FIs are required to apply

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reasonable measures to determine whether the customer (or their beneficial owner) is a PEP. Additionally, whenever an obliged entity conducts a special review (as per art.17), one of the things to be considered is whether any of the parties to the complex, large, unusual transaction is a domestic PEP (or family member of associate). Reasonable measures are defined as a review of the information obtained in the CDD process, in accordance with the risk factors. In higher-risk cases, FIs are required to apply the relevant measures applicable to foreign PEPs, as noted above in criterion 12.1. Specific provisions are included in regulation to allow screening of PEPs by centralised prevention bodies for relevant professions: *AML/CFT Law art.14.3, RD 304/2014 art.14*.

a5.38. *Criterion 12.3.* The relevant measures must be applied to family members and close associates of PEPs, with both terms defined in the law: *AML/CFT Law art.14.4*.

a5.39. *Criterion 12.4.* FIs are required to take reasonable measures to determine if the beneficiary of a life insurance policy (or their beneficial owner) is a PEP prior to payment of the benefit. If higher risks are identified, they are required to inform management, conduct enhanced scrutiny of the entire business relationship, and carry out a special review to determine whether a STR is warranted: *AML/CFT Law art.14.5 & 14.6*.

a5.40. *Weighting and conclusion:* Spain meets all four criteria of R.12. **R.12 is rated compliant.**

Recommendation 13 – Correspondent banking

a5.41. In its 3rd MER, Spain was rated non-compliant with these requirements. These issues were addressed through new legislation in 2010, which was analysed at the time of Spain’s exit from follow-up. Since then, relatively minor changes were made to R.13, with criterion 13.3 being the only substantial addition.

a5.42. *Criterion 13.1.* Credit institutions are required to apply the measures prescribed by R.13 in respect of cross-border correspondent banking relationships with respondent institutions from third countries, including gathering sufficient information to understand the respondent’s business, assessing the respondent’s AML/CFT controls, obtaining approval from a senior manager, and documenting the responsibilities of each institution. EU members are included in the term “third countries” and hence the R.13 obligations do apply to intra-EU correspondent banking relationships: *AML/CFT Law art.13*.

a5.43. *Criterion 13.2.* The use of payable-through correspondent accounts is prohibited in Spain, which renders the additional safeguards required by 13.2 not applicable: *AML/CFT Law art.13*.

a5.44. *Criterion 13.3.* Credit institutions are prohibited from entering into correspondent relations with shell banks, and must take appropriate measures to ensure their correspondents do not permit accounts to be used by shell banks: *AML/CFT Law art.13*.

a5.45. *Weighting and conclusion:* Spain meets all three criteria of R.13. **R.13 is rated compliant.**

Recommendation 14 – Money or value transfer services

a5.46. In its 3rd MER, Spain was rated as largely compliant with these requirements (para.520-534). The report considered that Spain had implemented most elements of the Recommendation, but noted concerns about the level of effectiveness (in particular a low level of STR reporting by MVTS). Spain’s law on payment services⁴ (Law 16/2009) is based on the *EU Payment Services Directive (2007/64/EC)*. Much of the analysis below will therefore apply to other EU member states.

4 “Payment institutions” are defined as legal persons (other than credit institutions) which have been authorised to carry out specified payment activities. The specified activities include the basis for the FATF definition of a MVTS, so the scope of Spain’s provisions is consistent with R.14: Law 16/2009, art.6.

a5.47. *Criterion 14.1.* Authorisation from the Ministry of Economy and Finance is required for the creation of a payment institution (or for the establishment of a branch of a payment institution based outside the EU). The Ministry is required to receive a report from SEPBLAC when considering requests, and may refuse authorisation for a range of reasons which include lack of appropriate internal controls, or the business and professional repute of the shareholders, administrators, or directors. Authorised institutions are included in a publicly available register. Some entities authorised in other EU member states operate in Spain under the EU passporting system, as described in Box 3.5 in the main report.

a5.48. *Criterion 14.2.* Entities which are not subject to Law 16/2009 are prohibited from providing payment services, and are subject to the same sanctions as entities providing unlicensed operations as a credit institution: *art.4.3-4.4.* These sanctions are fines of up to EUR 500 000, or EUR 1 000 000 for repeated infractions: *Law 26/1998 art.29.1.* There are no criminal sanctions for unlicensed MVTs. Possible unlicensed operators are identified through reports to the CNMV and Bank of Spain, and through STR analysis by SEPBLAC. The Bank of Spain has powers to investigate the provision of unlicensed payment services, and has carried out a number of investigations into such activity. Since 2006, six institutions have been sanctioned for operating as money remitters without a license, and two for providing payment services without a license.

a5.49. *Criterion 14.3.* Payment institutions are subject to coordinated supervision by the Bank of Spain and SEPBLAC. The Bank of Spain is in charge of controlling and inspecting payment institutions when they perform payment services. It is empowered to request documents, conduct on-site inspections, issue guidance, and intervene or sanction as necessary: *Law 16/2009 art.15.* SEPBLAC is responsible for monitoring compliance with AML/CFT requirements, in coordination with other supervisory bodies, and these requirements apply to payment institutions (as well as to credit institutions and other forms of financial activity): *AML/CFT Law art.47 & 44.2(m).*

a5.50. *Criterion 14.4.* Payment institutions are required to have a comprehensive list of agents, including identity and location information, which is available to the Commission for the Prevention of Money Laundering and Monetary Offences (the Commission). The Register of Payment Institutions maintained by the Bank of Spain includes all agents of payment institutions, as well as the institutions themselves. This register is publicly available and required to be updated frequently. Payment institutions are required to apply internal controls to their agents, including the application of a “fit and proper” test, and monitoring of agents’ activities: *RD 304/2014 art. 37.*

a5.51. *Criterion 14.5.* Payment institutions are subject to the general requirements of AML/CFT legislation on internal controls. They are required to have adequate AML/CFT policies and procedures which are communicated to branches and subsidiaries: *AML/CFT Law art.26.* Agents are not obliged persons themselves. The primary AML/CFT obligations are on the MVTs provider, which is responsible for the activity of its agents. Persons acting as agents do however have the same obligations as employees of obliged persons: *art 2.2.* Payment institutions are required to notify the Bank of Spain of procedures for the selection and training of agents and to ensure they have the required knowledge and skills: *RD 712/2010 art.14.*

a5.52. *Weighting and conclusion:* Spain meets all five criteria of R.14. **R.14 is rated compliant.**

Recommendation 15 – New technologies

a5.53. In its 3rd MER, Spain was rated partially compliant with these requirements, owing to the lack of a general requirement for FIs to have policies in place to deal with the misuse of technological developments, and the lack of specific regulations regarding non-face-to-face transactions. Analysis at the time of Spain’s exit from follow-up concluded that both deficiencies had been addressed. However, changes to the FATF Recommendations incorporated the requirements regarding non-face-to-face business in R.10, and refocused R.15 to focus on the identification and mitigation of risks associated with new technologies, with obligations for countries and financial institutions.

a5.54. *Criterion 15.1.* Financial institutions are required to pay special attention to any ML/TF threats arising from products or transactions that might favour anonymity, or from new developing technologies, and take appropriate measures to prevent their use for ML/TF: *AML/CFT Law art.16.* Where a threat is identified,

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FIs are required to conduct a specific analysis, and make this available to competent authorities.

a5.55. Spain has conducted a preliminary risk assessment of new payment methods. The FIU branch of SEPBLAC alerts its supervisory division of any new typologies detected through STRs. In several cases, action has been taken to mitigate the new risks identified, including measures on the use of new payment mechanisms in the online gambling sector, and actions to address the problem of criminals acting as agents in the e-money sector. In both cases, initial indications of a new vulnerability originated in an STR, but the response included measures such as the study of trends and statistics in the relevant sector, the introduction of new regulatory measures, and proactive monitoring by authorities of the entities exposed to such risks.

a5.56. *Criterion 15.2.* Financial institutions are required to pay special attention to any ML/TF threats that may arise from new technologies and take appropriate measures to prevent their use for ML/TF purposes, and in such cases to conduct a specific analysis of possible ML/TF threats. There is a requirement to undertake a specific risk assessment prior to the launch or use of a new product, service, distribution channel, or technology, and to take appropriate measures to manage and mitigate the risks: *AML/CFT Law art.16, RD 304/2014 art. 32.*

a5.57. *Weighting and conclusion:* Spain meets both criteria of R.15. **R.15 is rated compliant.**

Recommendation 16 – Wire transfers

a5.58. In its 3rd MER, Spain was rated largely compliant with these requirements. However, significant changes were made to the requirements in this area during the revision of the FATF Standards, and an entirely new set of laws and regulations on this subject now apply in Spain. Therefore little or no analysis is carried-forward from 2006.

a5.59. Spain implements the requirements on wire transfers through the *EU Regulation on Wire Transfers (1781/2006/EC)*, which has direct applicability in Spain. Some supporting elements (such as supervision arrangements and sanctions for non-compliance) are set out in Spanish legislation—notably in the *AML/CFT Law*, which includes the core AML/CFT requirements. Transfers taking place entirely within the EU and European Economic Area (EEA) are considered domestic transfers for the purposes of R.16, which is consistent with the Recommendation. EU Regulation 1781/2006 does not include all the requirements of the revised R.16. Most significantly, it does not include requirements regarding information on the *beneficiary* of a wire transfer, which were added to the FATF Standards in 2012. The authorities advise that an updated Regulation is being prepared at the EU level which will incorporate the new FATF requirements.

a5.60. *Criterion 16.1.* FIs are required to ensure that all cross-border wire transfers of EUR 1 000 or more are accompanied by the required and accurate originator information: *EU Regulation 1781/2006 art.4 & 5.* However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information.

a5.61. *Criterion 16.2.* The requirements of Regulation 1781/2006 regarding batch files are entirely consistent with the FATF requirements regarding originator information: *art.7.2.* However, there is no requirement to include beneficiary information in the batch file.

a5.62. *Criterion 16.3 & 16.4.* Regulation 1781/2006 requires collection (but not verification) of payer information in case of transactions below EUR 1 000. Spanish law supplements this, and requires verification of the identity of the payer in all transactions, including below EUR 1 000. However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information. Spain does not apply a *de minimis* exemption for wire transfers below a given threshold: *AML/CFT Law art.3, RD 304/2014 art.4, Order EHA/2619/2006 art.2.1.* As for retail credit transfers (issued according to SEPA standards), they need to be compliant with the requirements set out in EU Regulation 260/2012 of the European Parliament and of the Council establishing technical and business requirements for credit transfers and direct debits in euro. According to article 5 thereof, when carrying out a credit transfer, payment service providers (PSPs) must ensure that the IBANs of the payer and payee are used for the identification of payment accounts. Moreover, the payee's name must be provided, where available. According to the annex, this information must

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be passed in full and without alteration between PSPs.

a5.63. *Criteria 16.5 & 16.6.* Transfers within the EU and EEA are considered to be domestic transfers for the purposes of R.16, and are treated as such within Regulation 1781/2006. Domestic transfers may be accompanied only by the account number (or unique identifier) of the originator: *art.6*. The originator's PSP must be able to provide complete information on the originator, if requested by the payee, within three working days which is consistent with the second part of criterion 16.5 and criterion 16.6. There is also a general obligation to provide information to competent authorities.⁵

a5.64. *Criterion 16.7.* The ordering FI is required to retain complete information on the originator for five years: *Reg.1781/2006 art.5.5*. Financial institutions (including all entities executing wire transfers) are required to retain all records (including beneficiary information, where it exists) for a period of ten years: *AML/CFT Law*.

a5.65. 187. *Criterion 16.8.* Failure to comply with Regulation 1781/2006 is a breach of the *AML/CFT Law: art.52.5*. Ordering FIs are required to refrain from executing wire transfers that do not comply with the requirements set out in Regulation 1781/2006; *art.5*. The lack of requirements relating to beneficiary information indirectly affects this criterion.

a5.66. *Criterion 16.9.* Intermediary FIs are required to ensure that all originator information received and accompanying a wire transfer, is kept with the transfer: *Reg.1781/2006 art.12*. There are no requirements to do the same for beneficiary information which accompanies the wire transfer.

a5.67. *Criterion 16.10.* Where the intermediary FI uses a payment system with technical limitations, it must make all information on the originator available to the beneficiary financial institution upon request, within three working days, and must keep records of all information received for five years: *Reg.1781/2006 art.13*.

a5.68. *Criterion 16.11.* Intermediary FIs are not required to take reasonable measures to identify cross-border wire transfers that lack originator information or required beneficiary information.

a5.69. *Criterion 16.12.* Intermediary FIs are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

a5.70. *Criterion 16.13.* Beneficiary FIs are required to detect whether the fields containing required information on the originator have been completed, and to have effective procedures to detect whether the required originator information is missing: *Reg.1781/2006 art.8*. There are no requirements to detect whether the required beneficiary information is missing.

a5.71. *Criterion 16.14.* Beneficiary FIs are required by Spanish law to identify the beneficiary if it has not been previously verified: *AML/CFT Law art.3, RD 304/2014 art.4, Order EHA/2619/2006 art.2.4*.

a5.72. *Criterion 16.15.* Where the required originator information is missing or incomplete, beneficiary FIs are required to either reject the transfer or ask for complete information, and take appropriate follow-up action in cases where this is repeated: *Reg.1781/2006 art.9*. There are no requirements relating to cases where the required beneficiary information is missing or incomplete.

a5.73. *Criterion 16.16.* Regulation 1781/2006 applies to MVTS providers.

5 The definition of a domestic transfer within the EEA-area in the Regulation (Art.6(1)) is wider than that in R.16, which refers to "a chain of wire transfers that takes place entirely within the EU". The Regulation refers to the situation where the PSP of the payer and the PSP of the payee are situated in the EEA-area. Hypothetically, this means that according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

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a5.74. *Criterion 16.17.* MVTs fall within the scope of the *AML/CFT Law*, which includes general requirements on conducting special reviews of potentially suspicious transactions, filing STRs, and implementing internal controls. However in cases where the MVT operator controls both the sending and receiving end of the transfer, there is no specific obligation in Spanish law or regulation to file an STR in any other country. SEPBLAC has addressed this issue through supervisory instructions in some cases.

a5.75. *Criterion 16.18.* Financial institutions conducting wire transfers are subject to the requirements of the EU regulations which give effect to UN resolutions 1267, 1373, and successor resolutions.

a5.76. In terms of scope, R.16 does not apply to transfers from a credit, debit or prepaid cards for the purchase of goods or services, so long as the card number accompanies all transfers flowing from the transaction, and Regulation 1781/2006 is generally consistent with those requirements.

a5.77. *Weighting and conclusion:* Spain's regulations leave gaps in the areas where R.16 was updated in 2012. The most significant problem is the absence of any requirements relating to information on the beneficiary of a wire transfer, which is the main deficiency for criteria 16.1, 16.2, 16.3, 16.13, and 16.15, and also indirectly affects 16.8 and 16.9. Other problems are the lack of requirements for intermediary FIs to take reasonable measures to check if information is present, and to have risk-based policies governing their actions when it is not (16.11 and 16.12). Nevertheless, Spain does meet the original core requirements of R.16, to ensure originator information accompanies the payment. **R.16 is rated partially compliant.**

Reliance, Controls and Financial Groups

Recommendation 17 – Reliance on third parties

a5.78. In its 3rd MER, Spain did not permit reliance on third parties, so these requirements were judged to be not applicable. Spain introduced specific provisions on reliance in 2010. This Recommendation is particularly important in Spain, where financial groups have a significant role. A high proportion of securities and insurance business is conducted by entities which are part of financial groups, and which rely on the banking arm(s) of the group to conduct CDD.

a5.79. *Criterion 17.1.* Spain has implemented measures that are generally consistent with R.17 in that reliance is not permitted for ongoing monitoring of the business relationship and, where reliance is permitted, ultimate responsibility for completing CDD remains with the relying FI. There must be a written agreement between the relying FI and the third party, to formalise their respective obligations, and this agreement must require the third party to: (a) provide information on the client immediately⁶; and (b) provide copies of documents evidencing this information immediately, when requested. Relying FIs are also required to check that the third party is subject to AML/CFT obligations and supervision for compliance with these obligations, and has adequate procedures for compliance with CDD and record-keeping requirements. This satisfies all the elements of the criterion: *AML/CFT Law art 8, RD 304/2014 arts.13(3) & 13(2)*.

a5.80. *Criterion 17.2.* Reliance is permitted only on third parties covered by the AML/CFT legislation of other EU Member States or equivalent third countries. Reliance on members of the EU is not based on the level of country ML/TF risks, though it does reflect the fact that all EU members implement the same *EU Money Laundering Directive*. Inclusion on the EU list of equivalent third countries takes account of the level of compliance with FATF Standards, and is based on joint risk analysis by EU members, taking into account information on corruption, organised crime, and other ML/TF threats. Though the list of countries where reliance is permitted is not entirely risk-based, it does nevertheless *have regard* to the level of risk: *AML/CFT Law art.8.2*.

6 Spain notes that applying these obligations directly (rather than through contractual arrangements) would imply extraterritorial application of Spanish law.

a5.81. *Criterion 17.3.* Financial institutions are permitted to rely on CDD performed by their branches and subsidiaries in third countries, provided the group implements common measures for CDD and record-keeping, and has approved internal controls supervised by a group-level internal control body. Separate requirements on internal controls require measures to mitigate any higher risks: *RD 304/2014 arts.13.4, 34.*

a5.82. *Weighting and conclusion:* Overall, Spain broadly meets the criteria. There is only one specific element missing: that the level of country risk is not taken into account when considering whether reliance is permitted on a third party in another EU country. **R.17 is rated largely compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

a5.83. In its 3rd MER, Spain was rated largely compliant with these requirements. Some deficiencies were identified, including the lack of a legal obligation to establish screening procedures to ensure high standards when hiring employees, and concerns about the level of implementation and effectiveness. Spain's previous provisions in this area have been replaced by the *AML/CFT Law* and *RD 304/2014*.

a5.84. *Criterion 18.1.* FIs and other obliged entities are required to adopt internal policies and procedures for CDD, record-keeping, risk management, and other AML/CFT obligations, along with a customer admission policy, including risk indicators and graduated additional precautions for customers presenting a higher-than-average risk: *AML/CFT Law art.26*. FIs are further required to have a manual for the prevention of ML/TF, which is available to SEPBLAC and may be amended at its direction. On the specific elements set out in the criterion:

- a. *compliance management arrangements* - FIs are required to appoint a director or senior manager to act as representative to SEPBLAC (functionally equivalent to a management-level compliance officer) and have responsibility for reporting obligations. The representative must be fit and proper, and should have “*unlimited access to any information in the possession of the obliged person*”—a measure which significantly strengthens the representative's role. They must also establish an internal compliance unit responsible for implementing the policies and procedures, drawn from different business areas, headed by the representative to SEPBLAC: *AML/CFT Law art.26.2, RD 304/2014 arts.31, 35.*
- b. *screening procedures* - FIs must implement adequate policies and procedures to ensure high ethical standards in the recruitment of employees, directors, and agents: *RD 304/2014 art.40.*
- c. *ongoing employee training* - FIs must ensure that their employees are aware of the requirements of the *AML/CFT Law*, and must participate in specific ongoing training designed to detect transactions related to ML/TF: *art.29*. Obligated persons are required to prepare an annual training plan, taking account of the risks of the business sector and approved by the internal compliance unit. The requirement is met, though it may be also be desirable for authorities to provide further detailed guidance on the content of training programmes: *RD 304/2014 art.39.*
- d. *an independent audit function* - FIs must have their internal controls reviewed annually by an external expert who meets supporting requirements concerning his/her competence and independence, and consideration of the review results: *RD 304/2014 art.38.*

a5.85. DNFBPs employing fewer than 50 persons or with an annual turnover below EUR 10 million are exempted from the requirement to establish an internal control body, instead requiring the company's designated representative to SEPBLAC to exercise the internal control and reporting functions. DNFBPs employing fewer than 10 persons, and whose annual turnover is below EUR 2 million are also exempted from other internal control obligations (risk assessment, a prevention manual, external audit of AML/CFT measures, and training.) These exemptions are consistent with R.18 which envisages that this requirement should have regard to the size of the business and the level of ML/TF risk. SEPBLAC has issued detailed guidance on the requirements and implementation of internal controls: *RD 304/2014 art.31 & 35.*

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a5.86. *Criterion 18.2.* The *AML/CFT Law* includes requirements that internal controls shall be established at group level⁷, and that measures “at least equivalent to those laid down by community law” are applied in branches and subsidiaries located in third countries (including EU member countries). Regulation requires such group-wide measures to include procedures for the exchange of information among group members, unrestricted access to AML/CFT information by group-level internal control bodies, and safeguards on the use of information: *AML/CFT Law arts.26.4 & 31.1, RD 304/2014 art.36.*

a5.87. *Criterion 18.3.* Spanish financial institutions are required to apply AML/CFT measures at least equivalent to those laid down by (European) Community law in their branches and subsidiaries in third countries (including EU member states). In cases where the third country’s legislation does not permit the implementation of AML/CFT requirements, obliged entities are required to apply additional measures to mitigate the risks, and to inform SEPBLAC: *AML/CFT Law art.31.*

a5.88. *Weighting and conclusion:* The *AML/CFT Law* is significantly more detailed and demanding than the *EU’s Third Money Laundering Directive* (Directive 2005/60/EC) upon which it is based and transposes into Spanish law. As it is currently drafted, Spain’s law may technically allow branches and subsidiaries located in Spain of FIs incorporated in other EU countries, to apply less strict AML/CFT measures than those applicable to domestic institutions. This is particularly relevant at this point in time, when Spain has passed into national law a number of requirements (added to the FATF Standards in 2012), which have not yet been incorporated into a new EU Directive. However, considering the temporary nature of this issue and the fact that SEPBLAC has discretion to respond to inconsistencies of this type in the event that they do arise in practice (art.31), this issue has not been given significant weight. **R.18 is rated compliant.**

Recommendation 19 – Higher-risk countries

a5.89. In its 3rd MER, Spain was rated compliant with these requirements, which are now incorporated into R.19. However both Spain’s laws and the obligations of R.19 have changed significantly since the 2006 assessment.

a5.90. *Criterion 19.1.* FIs are required to take enhanced measures in cases set out in the law or regulations, in situations which by their nature pose a higher ML/TF risk, and in areas of business or activities which may pose higher risks. Six categories of high-risk countries, territories, or jurisdictions, are defined in regulation, including those that do not have appropriate AML/CFT systems, and those included on Spain’s national list of tax havens (some of which are the subject of Spain’s geographical AML/CFT risk assessments, as described in R.1). The general EDD provisions specifically require EDD to be applied to those countries where the FATF requires this. In addition, Spain requires FIs to systematically report transactions with certain countries⁸: *AML/CFT Law art.11, RD 304/2014 arts.19, 22*

a5.91. *Criterion 19.2.* In December 2013, Spain enacted amendments to the *AML/CFT Law* which added detailed requirements regarding countermeasures. The new measures give authority to the Council of Ministers to adopt countermeasures, either autonomously or in order to apply the decisions or recommendations of international organisations, institutions, or groups. The range of countermeasures which may be applied is broad enough to allow a proportionate and appropriate response to the risk: *art.42.*

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7 A “group” is defined in Spain’s Code of Commerce as when “a company holds, or may hold, directly or indirectly, the control over several others”: *art.42.* This is wider than the FATF definition, as it does not limit the term group to collections of entities which undergo consolidated supervision under the Core Principles, and could, for example, apply to groups of DNFBPs as well as to financial institutions.

8 These include RD 1080/1991 which requires systematic reporting of transactions with a list of countries (originally those considered tax havens, but updated in 2010 to include those considered to pose ML/TF risks), and RD 925/1995 (updated by RD 54/2005) which requires monthly reporting to SEPBLAC of transactions with countries listed in a ministerial Order. Such orders currently apply to eight countries.

a5.92. *Criterion 19.3.* Spanish authorities issue a public advisory through SEPBLAC's website to advise FIs of countermeasures or weaknesses in other countries' AML/CFT systems. This is based on the FATF/ICRG documents issued following each FATF meeting. Formal advisories are also provided to the Bank of Spain and the presidents of the National Bank Association and the National Savings Institutions. Spain also issues lists of countries which are subject to systematic reporting on the basis of ML/TF risks and other factors, as noted above in relation to criterion 19.1: *RD 1080/1991 and RD 925/1995 (updated by RD 54/2005)*.

a5.93. *Weighting and conclusion:* Spain meets all three criteria of R.19. **R.19 is rated compliant.**

Reporting of Suspicious Transactions

Recommendation 20 – Reporting of suspicious transaction

a5.94. In its 3rd MER, Spain was rated largely compliant with these requirements (para.422-450). The main technical deficiencies were that: attempted transactions were not directly subject to the reporting obligation and, because the scope of the ML offences was not quite broad enough, there was a corresponding negative impact on the scope of the reporting obligation. Spain addressed these deficiencies when it enacted the *AML/CFT Law: para.108 of Spain's 4thFUR*.

a5.95. *Criterion 20.1.* FIs are required to notify SEPBLAC of any act or transaction showing any indication or certainty that it bears a relation to ML/TF: *AML/CFT Law art.18, RD 304/2014 art.26*. The term *money laundering* is defined to mean the conversion, transfer, concealment, disguise, acquisition, possession or use of property knowing that it is derived from criminal activity or any participation in such activity: *AML/CFT Law art.1.2*. This formulation is broad enough to meet the requirements of R.20. FIs are also required to conduct a special review of any event or transaction, regardless of its size, which, by its nature, could be related to ML/TF, and record the results of their analysis in writing. This includes examining with special attention all complex or unusual transactions or patterns of behaviours, with no apparent economic or visible lawful purpose, or those denoting signs of deception or fraud: *AML/CFT Law art.17, RD 304/2014 art.23-25*. Spain has also addressed previous deficiencies in the scope of its ML and TF offences which previously impacted on the scope of the reporting obligation (see R.3 and R.5).⁹ The reporting of suspicious transactions related to tax crimes and other criminal activity has always been covered, as Spain has an all-crimes approach to its criminalisation of ML.

a5.96. *Criterion 20.2.* There is an explicit requirement to promptly report all suspicious transactions (regardless of their amount). This requirement also applies to suspicious attempted transactions which are to be recorded as “non-executed”: *AML/CFT Law art.18(1)-(2), RD 304/2014 art.24*.

a5.97. *Weighting and conclusion:* Spain meets both criteria of R.20. **R.20 is rated compliant.**

Recommendation 21 – Tipping-off and confidentiality

a5.98. In its 3rd MER, Spain was rated compliant with these requirements (para.422, 437-438 & 449).

a5.99. *Criterion 21.1.* Financial institutions and their employees are exempted from liability when disclosing

⁹ It should be noted that the remaining gap in the TF offence (the financing of an individual terrorist, who is not otherwise part of a terrorist group, for purposes completely unrelated to a terrorist act is not covered) does not negatively technically impact the STR reporting obligation. This is because the reporting obligation is worded very broadly (applying to “any indication...that it bears a relation to ML/TF”), and FIs are not expected to drill down further to determine whether a terrorist is acting on their own or part of a terrorist organisation.

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information to the competent authorities in good faith: *AML/CFT Law art.23*.

a5.100. *Criterion 21.2*. Financial institutions, their directors and employees are prohibited from disclosing to the customer or third persons the fact that information has been transmitted to the FIU, or is (or may be) under review for AML/CFT purposes to determine whether the transaction may be related to ML/TF. Breach of the disclosure prohibition is classed as a very serious offence under the *AML/CFT Law*, and is subject to the highest category of sanctions, as set out under R.35: *AML/CFT Law art.24, RD 304/2014 art.12, 24.1(d) & 26(2)*. It is prohibited to conduct any suspicious transaction, unless such a decision would endanger an investigation (for example, by tipping off the customer) or proves to be impossible: *AML/CFT Law art.19*.

a5.101. *Weighting and conclusion*: Spain meets both criteria of R.21. **R.21 is rated compliant.**

Designated non-financial businesses and professions

Recommendation 22 – DNFBPs: Customer due diligence

a5.102. In its 3rd MER, Spain was rated partially compliant with these requirements. The deficiencies related to the specific CDD regime applied to DNFBPs, and general concerns about implementation and effectiveness. Since then, Spain introduced a new basis for AML/CFT requirements on DNFBPs which eliminates the previous differential obligations on FIs and other obliged entities, and provides a single set of rules for all reporting parties, including relevant DNFBPs: *AML/CFT Law*.

a5.103. *Criterion 22.1 (R.10)*. The types of DNFBPs and the activities subject to CDD requirements include: casinos, dealers in precious metals and stones, notaries and registrars, auditors, external accountants, tax advisors, and persons carrying out (on a professional basis) specified activities relating to the creation and administration of legal persons and arrangements (corresponding to the FATF definition of trust and company service providers (TCSPs)): *AML/CFT Law art 2.1*. See R.10 for a description of these requirements, including the deficiencies which apply to both FIs and DNFBPs.

a5.104. As well as specific DNFBPs, to which the *AML/CFT Law* applies in all cases, these requirements also apply to specific activities undertaken by professionals, including: agency, commission, or brokerage in real estate trading; and the participation of lawyers or other independent professionals in the buying and selling of real estate or business entities, the management of funds, the opening or management of accounts, or the organisation of contributions necessary for the creation, operation or management of companies or trusts, companies or similar structures. Spain applies AML/CFT obligations to all the types of DNFBP required under R.22, as well as to property developers, professional dealers in art and antiques, lottery and other gambling operators, and cash transport companies. The deficiency identified in relation to failure to complete CDD, also applies in the case of DNFBPs.

a5.105. *Criteria 22.2 (R.11) and 22.3 (R.12)*. See R.11 (record keeping) and R.12 (PEPs) for a description of these requirements. No technical deficiencies were identified for these requirements.

a5.106. *Criterion 22.4 (R.15)*. See R.15 (new technologies) for a description of these requirements. No technical deficiencies were identified for these requirements.

a5.107. *Criterion 22.5 (R.17)*. See R.17 (reliance on third parties) for a description of these requirements. One minor deficiency was identified, regarding the level of country risk, which is not taken into account when considering whether reliance is permitted on a third party in another EU country. However, this is only relevant to some types of DNFBP.

a5.108. *Weighting and conclusion*: The requirements for DNFBPs are the same as those applied to FIs under R.10, 11, 12, 15 and 17. There are no deficiencies which relate specifically to DNFBPs, however, there are some deficiencies relating to the underlying CDD obligations in R.10 (criterion 22.1) and a minor deficiency in the reliance obligations of R.17 (criterion 22.5). **R.22 is rated largely compliant.**

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Recommendation 23 – DNFBPs: Other measures

a5.109. In its 3rd MER, Spain was rated partially compliant with these requirements due to deficiencies with the underlying Recommendations, and concerns about the effectiveness of implementation. As noted above in relation to R.22, Spain introduced a new basis for AML/CFT requirements on DNFBPs through the *AML/CFT Law* which eliminate the previous differential obligations on FIs and other obliged entities, and provides a single set of rules for all reporting parties, including relevant DNFBPs. The types of DNFBP and the activities subject to AML/CFT requirements are as set out above in relation to R.22, and include all the types of DNFBP and activity required by the *FATF Recommendations*.

a5.110. *Criterion 23.1 (R.20)*. See R.20 (suspicious transaction reporting) for a description of these requirements for which no technical deficiencies were identified. The key substantive difference between the reporting regimes for FIs and DNFBPs is that Spain permits the creation of centralised prevention bodies for collegiate professions, with responsibility for examining unusual transactions and considering the submission of STRs. The use of such bodies is in principle consistent with the requirements of this criterion and footnote 47 in the Methodology. Such a body exists for the notary profession (the OCP), and another is currently being created for registrars (the CRAB). Membership of these bodies is mandatory for all notaries and registrars. In the case of notaries, the OCP has access to a database including all notarised transactions, and uses software to identify high risk transactions or patterns of activity. The OCP analyses any transactions flagged by software or directly identified as suspicious by an individual notary, and considers whether to file an STR: *AML/CFT Law art.27, RD 304/2014 art.44*.

a5.111. *Criterion 23.2 (R.18)*. See R.18 (internal controls and foreign branches and subsidiaries) for a description of these requirements. The internal controls requirements applied to DNFBPs are the same as those for financial institutions.

a5.112. *Criterion 23.3 (R.19)*. See R.19 (higher risk countries) for a description of these requirements. No technical deficiencies were identified.

a5.113. *Criterion 23.4 (R.21)*. See R.21 (tipping off and confidentiality) for a description of these requirements. There is one additional element relevant to DNFBPs which clarifies that lawyers, auditors and related professions seeking to dissuade a customer from engaging in illegal activity does not constitute disclosure: *AML/CFT Law art.24.3*. This is consistent with footnote 48 to the Methodology.

a5.114. *Weighting and conclusion*: The requirements for DNFBPs are the same as those applied to FIs under R.20, 18, 29 and 21. **R.23 is rated compliant.**

Table of Acronyms

AEAT	Tax Agency
AECID	Spanish Agency for International Cooperation and Development
AML/CFT	Anti-money laundering / counter-terrorist financing
Art.	Article / articles
BNI	Bearer negotiable instruments
BOE	Spanish State Official Gazette
CD	Council Decision
CDD	Customer due diligence
CICO	Centre of Intelligence against Organised Crime
CIRBE	Bank of Spain database on the Balance of payments
CNCA	National Centre for Counter-terrorism Coordination
CNI	National Intelligence Centre
CNMV	National Securities Market Commission
CNP	National Police
Commission	Commission for the Prevention of Money Laundering and Monetary Offences
CP	Common Position
CRAB	AML Centre of the Spanish Registers
DGSFP	Directorate-General for Insurance and Pension Funds
DNFBPs	Designated non-financial businesses and professions
DPRK	Democratic People's Republic of Korea
EDD	Enhanced due diligence
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
ETA	Euskadi Ta Askatasuna
EU	European Union
FIs	Financial institutions
FIU	Financial intelligence unit
FSAP	Financial Sector Assessment Program
FUR	Follow-up report
JI	Service of Information (Civil Guard)
JIMDDU	Inter-ministerial Body on Material of Defence and Dual-use
JIT	Joint Investigation Teams
LEAs	Law enforcement authorities
MAEC	Foreign Affairs and Cooperation Ministry
MER	Mutual evaluation report
Merida Convention	United Nations Against Corruption

TABLE OF ACRONYMS

ML	Money laundering
MLA	Mutual legal assistance
MOU	Memorandum of Understanding / Memoranda of Understanding
MVTS	Money or value transfer services
NPO	Non-profit organisation
OCP	General Council of Notaries Centralized Prevention Unit
OJEU	EU Official Gazette (OGEU),
OLA	Asset Tracing Office (Civil Guard)
ORA	Asset Recovery Office (CICO)
Palermo Convention	United Nations Convention Against Transnational Organised Crime, 2000
Para.	Paragraph / paragraphs
R.	Recommendation / Recommendations
Reg.	Regulation
RD	Royal Decree
SEPBLAC	Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences
SINVES	System of Investigation (Civil Guard)
SP	Special Prosecutor
SRI	System of Register of Investigation (CNP)
STR	Suspicious transaction report
TCSP	Trust and company service provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
TF	Terrorist financing
TFS	Targeted financial sanctions
TGSS	Registry of Social Security
UDEF	Central Unit against Economic and Fiscal Crime (National Police)
UDYCO	Unit Against Drugs Organised Crime (National Police)
UN	United Nations
UTPJ	Judicial Police Technical Unit (Civil Guard)
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
WP	Working Party